

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION
4 PERSONALIZED MEDIA) ()
5 COMMUNICATIONS, LLC,) ()
6 PLAINTIFF,) (CIVIL ACTION NO.
7) (2:15-CV-1366-JRG-RSP
8 VS.) (MARSHALL, TEXAS
9) ()
10 APPLE INC.,) (MARCH 19, 2021
11 DEFENDANT.) (8:33 A.M.
12 TRANSCRIPT OF JURY TRIAL
13 BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP
14 UNITED STATES CHIEF DISTRICT JUDGE
15

16 FOR THE PLAINTIFF: Mr. Douglas J. Kline
17 Mr. J. Anthony Downs
18 Mr. Kevin P. Martin
19 Mr. Robert Frederickson, III
GOODWIN PROCTER, LLP
100 Northern Avenue
Boston, MA 02210

20 COURT REPORTER: Ms. Shelly Holmes, CSR, TCRR
21 Official Court Reporter
United States District Court
Eastern District of Texas
22 Marshall Division
100 E. Houston
23 Marshall, Texas 75670
(903) 923-7464
24

25 (Proceedings recorded by mechanical stenography, transcript
produced on a CAT system.)

1 FOR THE PLAINTIFF: Ms. Alexandra D. Valenti
2 Ms. Autumn E. Soucy
GOODWIN PROCTER, LLP
3 The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
4
5 Mr. S. Calvin Capshaw, III
Ms. Elizabeth DeRieux
CAPSHAW DERIEUX, LLP
6 114 E. Commerce Avenue
Gladewater, TX 75647
7
8 FOR THE DEFENDANT: Mr. Gregory S. Arovas
Mr. Robert A. Appleby
Mr. Alan Rabinowitz
Mr. Jonathan D. Brit
9 KIRKLAND & ELLIS, LLP
601 Lexington Avenue
New York, NY 10022
10
11 Mr. Marcus E. Sernel
Ms. Meredith Zinanni
Mr. Jake Rambeau
12 KIRKLAND & ELLIS, LLP
300 North LaSalle Street
13 Suite 2400
Chicago, IL 60654
14
15 Mr. Ellisen S. Turner
KIRKLAND & ELLIS, LLP
2049 Century Park East
16 Suite 3700
Los Angeles, CA 90067
17
18 Mr. Sean M. McEldowney
KIRKLAND & ELLIS, LLP
655 15th Street NW
19 Suite 1200
Washington, DC 20005
20
21 Ms. Melissa R. Smith
GILLAM & SMITH, LLP
303 South Washington Avenue
22 Marshall, TX 75670
23
24
25

08:05:59 1 Jury out.)

08:05:59 2 COURT SECURITY OFFICER: All rise.

08:06:00 3 THE COURT: Be seated, please.

08:33:45 4 As you'll recall, counsel, we finished the

08:33:55 5 evidence about 2:00 o'clock yesterday afternoon. After

08:33:59 6 that, the Court took up outside of the presence of the jury

08:34:03 7 motions from both Plaintiff and Defendant presented under

08:34:09 8 Rule 50(a) of the Federal Rules of Civil Procedure. After

08:34:14 9 hearing extensive argument on each motion from both sides,

08:34:17 10 the Court gave you rulings from the bench on those motions

08:34:21 11 under Rule 50(a).

08:34:22 12 Subsequent to the 50(a) practice, the Court then

08:34:25 13 subsequently convened an informal charge conference where

08:34:32 14 for a considerable period of time the Court met with

08:34:35 15 counsel from both sides informally off the record and

08:34:38 16 discussed at length various provisions in the proposed

08:34:47 17 final jury instructions and verdict form where the parties

08:34:49 18 had differing opinions.

08:34:53 19 There were also times where the Court had

08:34:55 20 questions about language submitted that neither party had

08:34:58 21 objected to. It was a thorough, helpful to the Court, and

08:35:03 22 open fulsome discussion with input on any issue that either

08:35:09 23 party or the Court felt should be addressed within the then

08:35:15 24 current version of the final jury instructions and verdict

08:35:18 25 form.

08:35:18 1 After the conclusion of the informal charge
08:35:21 2 conference yesterday, late afternoon, early evening, the
08:35:31 3 Court recessed and has then taken the opportunity to digest
08:35:34 4 and consider all the input it received during the informal
08:35:37 5 charge conference and has applied that to the existing
08:35:44 6 iterations of the final jury instructions and verdict form
08:35:47 7 and has produced overnight what it believes should be the
08:35:51 8 proper and correct final jury instruction and verdict form
08:35:55 9 in this case.

08:35:57 10 Something over 30 minutes ago, I provided written
08:36:02 11 copies and on request PDF emailed copies of the same to
08:36:07 12 both sides. They've had an opportunity to review those
08:36:11 13 areas of those documents where there have been discussions.

08:36:17 14 And at this point, the Court is prepared to
08:36:20 15 conduct a formal charge conference on the record so that
08:36:22 16 either party may offer objections where they feel something
08:36:27 17 has been included which shouldn't be or something has been
08:36:31 18 omitted that should have been included.

08:36:33 19 As I indicated to you yesterday, we'll do this on
08:36:38 20 a page-by-page basis so that nothing is overlooked. We'll
08:36:42 21 begin with the final jury instructions. And as I mentioned
08:36:46 22 yesterday, it's my practice and my request that there be a
08:36:49 23 single spokesman for both Plaintiff and Defendant who are
08:36:54 24 positioned at the podium together to expedite the process
08:36:58 25 of going through this and hearing any objections that might

08:37:00 1 be made.

08:37:01 2 So with that if whoever is going to act for

08:37:04 3 Defendant and Plaintiff will go to the podium, we'll begin

08:37:06 4 with the final jury instructions.

08:37:09 5 And we'll turn our attention to Page 1 of those

08:37:13 6 instructions.

08:37:15 7 Looking at Page 1 of the final jury instructions,

08:37:17 8 is there objection here from either party?

08:37:20 9 MR. MARTIN: Not for Plaintiff, Your Honor.

08:37:22 10 MR. MCELDOWNEY: Not from Defendant, Your Honor.

08:37:24 11 THE COURT: Turning then to Page 2, is there

08:37:26 12 objection here from either party?

08:37:28 13 MR. MARTIN: Not for Plaintiff, Your Honor.

08:37:30 14 MR. MCELDOWNEY: Not from Defendant, Your Honor.

08:37:32 15 THE COURT: Turning then to Page 3 of the final

08:37:35 16 jury instructions, is there objection here from either

08:37:38 17 party?

08:37:38 18 MR. MARTIN: Not for Plaintiff, Your Honor.

08:37:40 19 MR. MCELDOWNEY: Not from Defendant.

08:37:41 20 THE COURT: Next is Page 4. Is there any

08:37:44 21 objection here from either party?

08:37:46 22 MR. MARTIN: Not for Plaintiff, Your Honor.

08:37:47 23 MR. MCELDOWNEY: Not from Defendant.

08:37:48 24 THE COURT: Turning next to Page 5, is there

08:37:54 25 objection here from either party?

08:37:56 1 MR. MARTIN: Not for Plaintiff, Your Honor.

08:37:58 2 MR. MCELDOWNEY: Not from Defendant, Your Honor.

08:38:00 3 THE COURT: Turning next then, counsel, to Page 6,

08:38:05 4 is there objection here from either party?

08:38:07 5 MR. MARTIN: Your Honor, this is -- I apologize --

08:38:09 6 not an objection, it's an observation that the text

08:38:12 7 beginning at the very bottom of Page 6 also seems to start

08:38:16 8 appearing almost verbatim again on Page 9.

08:38:21 9 THE COURT: On Page 9?

08:38:22 10 MR. MARTIN: Yeah, the "you will first need to

08:38:25 11 understand" language at the very bottom of Page 6 then

08:38:29 12 appears again on Page 9, Your Honor. I don't know if that

08:38:31 13 was intentional or...

08:38:50 14 THE COURT: Well, there are some intended

08:38:55 15 redundancies in here. I don't find that that's a problem.

08:38:55 16 And unless either side wishes to object, we'll leave it

08:39:02 17 like it is.

08:39:02 18 MR. MARTIN: No objection, Your Honor.

08:39:03 19 MR. MCELDOWNEY: No objection from Apple either.

08:39:04 20 THE COURT: All right. Then we'll turn next to

08:39:06 21 Page 7 of the final jury instructions. Is there objection

08:39:08 22 here from either party?

08:39:09 23 MR. MARTIN: No, Your Honor.

08:39:10 24 MR. MCELDOWNEY: No, Your Honor.

08:39:13 25 THE COURT: Next is Page 8. Is there objection

08:39:15 1 here from either party?

08:39:17 2 MR. MARTIN: No, Your Honor.

08:39:17 3 MR. MCELDOWNEY: In the end of the first

08:39:23 4 paragraph, Your Honor, Apple would propose that the last

08:39:25 5 sentence start with the word "however."

08:39:30 6 THE COURT: Instead of the word "if."

08:39:38 7 MR. MCELDOWNEY: Just to indicate that it's a

08:39:43 8 transition.

08:39:44 9 THE COURT: So you're suggesting that I add the

08:39:46 10 word "however" before the word "if."

08:39:49 11 MR. MCELDOWNEY: That's correct.

08:39:50 12 THE COURT: So the last sentence would begin,

08:39:56 13 "however if a method is missing"?

08:39:58 14 MR. MCELDOWNEY: That's correct, Your Honor.

08:39:59 15 THE COURT: All right. I'll make that change.

08:40:02 16 However, I'm more concerned about legal issues than I am

08:40:05 17 substance or semantics.

08:40:07 18 MR. MCELDOWNEY: Understood, Your Honor.

08:40:08 19 THE COURT: It's quite possible in reading this I

08:40:12 20 may add a word here or there that's not in the text for

08:40:15 21 purely semantic or flow of presentation purposes, but I'll

08:40:21 22 add the word "however" here.

08:40:23 23 Anything else on Page 8 from either party?

08:40:25 24 MR. MARTIN: No, Your Honor.

08:40:26 25 THE COURT: For Defendant?

08:40:30 1 MR. MCEDLOWNEY: Sorry. No, Your Honor.

08:40:31 2 THE COURT: All right. Turning then to Page 9 of

08:40:35 3 the final jury instructions, is there objection here from

08:40:38 4 either party?

08:40:39 5 MR. MARTIN: Not by Plaintiff, Your Honor.

08:40:40 6 MR. MCEDLOWNEY: Not from Apple either, Your

08:40:42 7 Honor.

08:40:42 8 THE COURT: Next is Page 10. Is there objection

08:40:45 9 here from either party?

08:40:46 10 MR. MARTIN: No, Your Honor.

08:40:48 11 MR. MCEDLOWNEY: No, Your Honor.

08:40:53 12 THE COURT: Turning to Page 11, is there objection

08:40:55 13 here from either party?

08:40:56 14 MR. MARTIN: No, Your Honor.

08:40:57 15 MR. MCEDLOWNEY: Two issues from Apple, Your

08:41:08 16 Honor.

08:41:08 17 In Point 2 for inducement, Apple would propose

08:41:13 18 that it read: "Apple has taken action intending to cause

08:41:17 19 those infringing acts" just to make clear that it's the

08:41:21 20 acts at issue.

08:41:22 21 THE COURT: Tell me where on the page you are,

08:41:25 22 counsel.

08:41:25 23 MR. MCEDLOWNEY: I'm sorry, Your Honor. I'm

08:41:26 24 getting ahead of myself or getting ahead of you.

08:41:30 25 No objection on Page 11.

08:41:32 1 THE COURT: All right. Then let's turn to Page

08:41:34 2 12. Is there objection here from either party?

08:41:37 3 MR. MARTIN: Your Honor, PMC objects to the third

08:41:41 4 point under the definition of induced infringement on the

08:41:46 5 basis that it's unclear whether willful blindness extends

08:41:51 6 only to the infringing acts or also extends to the

08:41:54 7 existence of the asserted patent.

08:41:57 8 THE COURT: All right. Is there objection from

08:42:05 9 Apple to anything on Page 12?

08:42:07 10 MR. MCELDOWNEY: As to point 2, Your Honor, Apple

08:42:09 11 would propose that it read "Apple has taken action

08:42:13 12 intending to cause those infringing acts" to make clear

08:42:17 13 that it's a reference back to the acts at issue in Point 1.

08:42:21 14 And as to Point 3, Your Honor, I think there needs

08:42:24 15 to be a temporal connection to when the knowledge occurs so

08:42:29 16 that that would be the first point at which indirect

08:42:32 17 infringement could be found. I think that comes out in a

08:42:35 18 later instruction, but I think it should be made clear here

08:42:38 19 is our position.

08:42:42 20 THE COURT: All right. Anything else from either

08:42:43 21 party on Page 12?

08:42:45 22 MR. MARTIN: No, Your Honor.

08:42:45 23 THE COURT: Those objections are overruled.

08:42:47 24 Let's turn to Page 13. Any objection here from

08:42:50 25 either party?

08:42:51 1 MR. MARTIN: Your Honor, Plaintiff objects to
08:42:53 2 the -- in the first paragraph on Page 13 to the sentences
08:42:58 3 beginning "nor is it sufficient that the company" and --
08:43:03 4 and a "mere fact that the company" which app -- which PMC
08:43:08 5 simply believes are confusing in light of the instructions
08:43:11 6 which came on the preceding page as to what is induced
08:43:15 7 infringement.

08:43:17 8 And then the final sentence, Your Honor, in that
08:43:26 9 paragraph: PMC believes that the specific intent should be
08:43:29 10 with respect to the infringing acts rather than to
08:43:33 11 infringement of the patent, as long as the sufficient
08:43:39 12 knowledge is in place.

08:43:41 13 As to the bottom of the page, Your Honor, in the
08:43:44 14 discussion of contributory infringement, PMC objects to the
08:43:49 15 absence of an instruction concerning willful blindness with
08:43:53 16 respect to contributory infringement and believes that
08:43:56 17 willful blindness having been mentioned with respect to
08:44:03 18 inducement, the jury might believe that willful blindness
08:44:03 19 is not sufficient for contributory infringement.

08:44:05 20 THE COURT: Anything else from Plaintiff, rather,
08:44:07 21 on Page 13?

08:44:08 22 MR. MARTIN: No, Your Honor.

08:44:09 23 THE COURT: Anything from Defendant on Page 13?

08:44:11 24 MR. MCELDOWNEY: No objection as written, Your
08:44:14 25 Honor.

08:44:14 1 THE COURT: Okay. Plaintiff's objections with
08:44:16 2 regard to Page 13 are overruled.

08:44:18 3 Turn next to Page 14 of the final jury
08:44:23 4 instructions. Does either party have an objection here?

08:44:27 5 MR. MARTIN: No, Your Honor.

08:44:28 6 MR. MCELDOWNEY: No, Your Honor.

08:44:29 7 THE COURT: Next is Page 15, does either party
08:44:32 8 have an objection here?

08:44:33 9 MR. MARTIN: No, Your Honor.

08:44:34 10 MR. MCELDOWNEY: No, Your Honor.

08:44:36 11 THE COURT: Next is Page 16. Does either party
08:44:40 12 have an objection here?

08:44:41 13 MR. MARTIN: No, Your Honor.

08:44:41 14 MR. MCELDOWNEY: No, Your Honor.

08:44:43 15 THE COURT: Turning next to Page 17. Does either
08:44:46 16 party object to anything on Page 17?

08:44:49 17 MR. MARTIN: Plaintiff does not, Your Honor.

08:44:51 18 MR. MCELDOWNEY: Apple objects in the last
08:44:56 19 paragraph on Page 17, the sentence that starts "The filing
08:45:00 20 of the complaint," Apple does not believe that that filing
08:45:03 21 of the complaint is sufficient for knowledge and intent on
08:45:07 22 inducement or contributory infringement, Your Honor.

08:45:09 23 THE COURT: All right. Anything further on Page
08:45:15 24 17?

08:45:15 25 MR. MARTIN: No, Your Honor.

08:45:17 1 THE COURT: Anything further from Defendant?

08:45:18 2 MR. MCEDOWNEY: No, Your Honor.

08:45:29 3 THE COURT: All right. Defendant's objection on

08:45:32 4 Page 17 is overruled.

08:45:33 5 Turning next to Page 18, is there any objection

08:45:37 6 here from either party?

08:45:38 7 MR. MARTIN: Not for Plaintiff, Your Honor.

08:45:41 8 MR. MCEDOWNEY: Not from Defendant, Your Honor.

08:45:46 9 THE COURT: I'll assume there's no objection on

08:45:47 10 Page 19, but I'll ask. Is there objection here from either

08:45:51 11 party?

08:45:52 12 MR. MARTIN: No, Your Honor.

08:45:52 13 MR. MCEDOWNEY: No, Your Honor.

08:45:53 14 THE COURT: Turning then to Page 20, is there

08:45:55 15 objection here from either party?

08:45:57 16 MR. MARTIN: No, Your Honor.

08:45:58 17 MR. MCEDOWNEY: No, Your Honor.

08:45:59 18 THE COURT: Page 21 being the final page of the

08:46:04 19 proposed final jury instructions, is there any objection

08:46:07 20 here from either party?

08:46:08 21 MR. MARTIN: No, Your Honor.

08:46:09 22 MR. MCEDOWNEY: No, Your Honor.

08:46:10 23 THE COURT: All right. Let me ask counsel to turn

08:46:13 24 your attention to the verdict form, which has been provided

08:46:16 25 to you.

08:46:19 1 We'll follow the same approach. Begin with the
08:46:21 2 cover page where the style of the case is set forth. Is
08:46:26 3 there objection to anything on Page 1 of the verdict form?
08:46:29 4 MR. MARTIN: No, Your Honor.
08:46:30 5 MR. MCELDOWNEY: No, Your Honor.
08:46:30 6 THE COURT: All right. Page 2 where definitions
08:46:35 7 are supplied, is there objection here from either party?
08:46:38 8 MR. MARTIN: Not by Plaintiff, Your Honor.
08:46:39 9 MR. MCELDOWNEY: No, Your Honor.
08:46:41 10 THE COURT: Page 3, is there any objection to
08:46:44 11 anything on this Page of the verdict form?
08:46:46 12 MR. MARTIN: No, Your Honor.
08:46:47 13 MR. MCELDOWNEY: No, Your Honor.
08:46:48 14 THE COURT: Turning next to Page 4 of the verdict
08:46:53 15 form where Question 1 is located, is there objection here
08:46:57 16 from either party?
08:46:58 17 MR. MARTIN: No, Your Honor.
08:46:59 18 MR. MCELDOWNEY: Apple objects and would propose,
08:47:06 19 as it did in the submission, that there be a question as to
08:47:09 20 whether all the claimer elements are met and separately
08:47:13 21 whether there is indirect infringement, Your Honor.
08:47:15 22 THE COURT: That objection is overruled.
08:47:16 23 We'll turn to Page 5 where Question 2a is located.
08:47:21 24 Is there objection here from either party?
08:47:23 25 MR. MARTIN: Not by Plaintiff, Your Honor.

08:47:24 1 MR. MCELDOWNEY: Apple objects -- or thinks that
08:47:35 2 there is -- an issue between Questions 2a and 2b. And I
08:47:45 3 think -- well, it could be resolved either by a
08:47:50 4 modification of 2a or 2b.

08:47:52 5 The issue, Your Honor, is that in Question 2b, the
08:47:56 6 way it's written, it sounds as if a lump sum could not be
08:48:01 7 awarded in the case because 2a says that the damages are
08:48:06 8 only through June 30th, 2020, whereas, 2b says that a lump
08:48:13 9 sum would include future use. And I think the jury could
08:48:17 10 infer, therefore, that they cannot answer lump sum because
08:48:22 11 that would include future use, whereas, 2a says the damages
08:48:27 12 are only through June 30th, 2020.

08:48:30 13 THE COURT: Well, the typical structure of this
08:48:32 14 type of question says for the running royalty, damages
08:48:39 15 through the date of the trial. And the evidence presented
08:48:41 16 in this case stops in June 30th, 2020, as to damages. It
08:48:49 17 doesn't stop in March of 2021. So really we're talking
08:48:54 18 about the difference from saying as to a running royalty,
08:48:58 19 damages through the date of trial versus damages through
08:49:00 20 June 30th, 2020.

08:49:02 21 I don't know how that implies to the jury that a
08:49:06 22 running royalty would not go beyond the date of the
08:49:10 23 evidence presented.

08:49:14 24 MR. MCELDOWNEY: It's --

08:49:15 25 THE COURT: In other words, counsel, if you say

08:49:17 1 there's some confusion here, I'm trying to understand the
08:49:19 2 confusion.

08:49:20 3 MR. MCEDLOWNEY: No. Understood.

08:49:21 4 So in 2b, Your Honor, the lump sum is stated as
08:49:25 5 representing damages for past and future use.

08:49:30 6 In 2a, the question is damages resulting from
08:49:34 7 infringement through June 30th.

08:49:37 8 And I think there could be confusion as to whether
08:49:41 9 the jury can award a lump sum that includes future use if
08:49:48 10 2a is expressly limited to the period through June 30th.

08:49:51 11 And so it's not the June through March issue I'm concerned
08:49:56 12 about, it's that the lump sum would capture future use.

08:50:02 13 The proposal that I think would address the
08:50:08 14 concern here is in 2a to simply say "damages resulting from
08:50:14 15 infringement" and leave off "through June 30, 2020."

08:50:26 16 And then, similarly, in 2b, not include the
08:50:31 17 "through June 30, 2020."

08:50:35 18 THE COURT: Well, interesting enough, my
08:50:38 19 recollection is we discussed this at length in the informal
08:50:42 20 charge conference. I raised the issue of the damages
08:50:46 21 evidence ending at June 30th and not having been updated
08:50:50 22 through the date of trial, which is often the case.

08:50:53 23 And my recollection is both sides, including the
08:50:56 24 Defendant, agreed it would be best to make it clear that
08:50:59 25 the damages evidence was only through June the 30th so that

08:51:04 1 an award would not be later argued to be through the date
08:51:08 2 the verdict's returned, even though the evidence presented
08:51:14 3 on damages ended on June the 30th of last year.

08:51:16 4 I don't know if you had a change of mind since
08:51:19 5 yesterday, or you've now determined that what you thought
08:51:21 6 was clear yesterday is now confusing.

08:51:24 7 MR. MCEDLOWNEY: So I think yesterday at the
08:51:26 8 informal charge conference what was said was that we did
08:51:29 9 need to confer with our client because the issue was one we
08:51:34 10 hadn't discussed previously. But also the language in this
08:51:37 11 proposed verdict form is different than the proposals that
08:51:41 12 were at issue yesterday.

08:51:42 13 And this issue of lump sum being for future
08:51:46 14 damages versus a date that is defined as ending for damages
08:51:49 15 on June 30th wasn't presented in the proposals that were
08:51:53 16 submitted. So it's --

08:51:53 17 THE COURT: So it's --

08:51:56 18 MR. MCEDLOWNEY: -- just an issue I just
08:51:58 19 identified this morning, Your Honor.

08:51:59 20 THE COURT: Does Plaintiff's counsel have any
08:52:01 21 opinion on this objection?

08:52:02 22 MR. MARTIN: Your Honor, Plaintiff's counsel would
08:52:04 23 be okay with Question 2a asking what sum of money, if any,
08:52:10 24 paid now in cash, has PMC proven by a preponderance of the
08:52:14 25 evidence would compensate PMC for its damages, period; if

08:52:19 1 then, Question 2b remained the way it is.

08:52:23 2 So that the jury would be asked, was that amount
08:52:26 3 in the prior question a lump sum for past and future
08:52:29 4 damages or a running royalty through June 30th, 2020. You
08:52:32 5 could actually bring that, which is the closing date of
08:52:38 6 damages language from 2a over to 2b, and I think that would
08:52:43 7 capture everything Plaintiff's counsel was hoping to do
08:52:45 8 yesterday, Your Honor.

08:52:46 9 THE COURT: All right. Here's the Court's ruling
08:52:49 10 on this objection. The final jury instructions, which
08:52:59 11 we've just gone over, make it clear that the evidence
08:53:02 12 presented on damages during the trial did not go past June
08:53:06 13 the 30th of 2020.

08:53:08 14 With that instruction included in the charge to
08:53:11 15 the jury, I'm persuaded, as I sit here, that it's not
08:53:15 16 necessary to spell out June the 30th, 2020, in the verdict
08:53:21 17 form questions.

08:53:22 18 Accordingly, I'm going to modify Question 2a to
08:53:26 19 end after the word "infringement" on the third line so that
08:53:30 20 the question would now read: "What sum of money, if any,
08:53:36 21 now paid in cash, has PMC proven by a preponderance of the
08:53:39 22 evidence would compensate PMC for its damages resulting
08:53:42 23 from infringement."

08:53:46 24 And Question 2b would be similarly modified to end
08:53:51 25 with a period inserted on the last line after the word

08:53:57 1 "royalty," so that the question, as modified, would now
08:54:01 2 read: "Is the amount you awarded in Question 2a a lump sum
08:54:07 3 representing damages for past and future use of the claimed
08:54:09 4 methods, or is the amount you awarded in Question 2a a
08:54:13 5 running royalty?"

08:54:15 6 And that's the action the Court's going to take,
08:54:19 7 to the extent either party has an objection to that, that
08:54:23 8 objection is overruled.

08:54:26 9 All right. Are there any other objections on
08:54:28 10 Pages 5 or 6 of the verdict form?

08:54:31 11 MR. MARTIN: No other objections by Plaintiff,
08:54:35 12 Your Honor.

08:54:35 13 MR. MCELDOWNEY: Not from Apple, Your Honor.
08:54:37 14 THE COURT: Then the last page, Page 7, of the
08:54:40 15 verdict form includes the date and signature for the
08:54:44 16 foreperson.

08:54:44 17 Is there objection to anything on Page 7 of the
08:54:49 18 verdict form?

08:54:50 19 MR. MARTIN: No, Your Honor.

08:54:51 20 MR. MCELDOWNEY: No, Your Honor.

08:54:52 21 THE COURT: All right. Thank you, counsel.

08:54:54 22 With those changes, that will complete the formal
08:54:58 23 charge conference.

08:55:00 24 I need a few minutes to print clean copies of the
08:55:05 25 final jury instructions and verdict form. As I indicated

08:55:12 1 to you yesterday and before, I think, my practice is to
08:55:15 2 give the final jury instructions orally to the jury, hear
08:55:20 3 the parties' respective closing arguments, and then at the
08:55:24 4 time I instruct the jury to retire and deliberate on its
08:55:26 5 verdict, I will send into the jury room eight printed
08:55:29 6 copies of the final jury instructions in written form so
08:55:33 7 that each juror will have their own copy, as well as one
08:55:38 8 clean copy of the verdict form.

08:55:40 9 It will take me a few minutes to have those copies
08:55:43 10 printed. As soon as I have that done, it's my intention to
08:55:46 11 bring in the jury and proceed with the Court's final
08:55:49 12 instructions, followed by closing arguments.

08:55:53 13 I want to cover two other things before we recess.
08:55:56 14 Number one, I want to make it clear to everyone
08:56:00 15 present, including those that are in the gallery, as well
08:56:04 16 as those beyond the bar, the Court considers its final
08:56:09 17 instructions to the jury and closing arguments presented
08:56:12 18 after all the evidence by counsel to be the most serious
08:56:16 19 parts of a very serious process.

08:56:19 20 Therefore, if you need to come or go, if you need
08:56:23 21 to visit the restroom, if you need to shuffle any papers,
08:56:27 22 if you need to do anything that might be disruptive, do it
08:56:32 23 now and don't do it once I bring in the jury. I want
08:56:36 24 complete stillness, quiet, and respect shown to the parties
08:56:40 25 and the Court during this process.

08:56:44 1 Additionally, one other thing, this morning when
08:56:49 2 the jurors arrived, I was informed by Ms. Clendening, our
08:56:54 3 deputy in charge, that one of the jurors brought with him a
08:56:59 4 small carpenter's level. I have not seen it.

08:57:05 5 But it's been described to me as approximately 12
08:57:07 6 inches in length with the typical bubbles and inserts that
08:57:15 7 a carpenter's level has with it. When it was detected by
08:57:19 8 the Court Security Officer and he inquired about it, he was
08:57:24 9 told I want to use it with the jury to demonstrate truth.

08:57:28 10 I informed both local counsel of that as soon as
08:57:32 11 it came to my attention since lead counsel were not yet at
08:57:37 12 the courthouse, and I've given local counsel an opportunity
08:57:39 13 to review this with their lead counsel.

08:57:43 14 My instructions upon learning of this was to tell
08:57:46 15 the Court Security Officer, through Ms. Clendening, that
08:57:49 16 the Court Security Officers were to retain the carpenter's
08:57:53 17 level and keep it in their possession and tell the juror
08:57:59 18 that the Court would consult with the parties and would
08:58:02 19 advise later whether he could have it in the jury room with
08:58:06 20 him or whether he could not have it in the jury room with
08:58:09 21 him during deliberations.

08:58:11 22 So I want to take an opportunity to get a reaction
08:58:15 23 from both Plaintiff and Defendant on the record. Again, I
08:58:18 24 tried to give both sides a heads-up so that this would be
08:58:23 25 something you have a minute or -- or some period of time --

08:58:26 1 several minutes to think about and consider.

08:58:30 2 That being said, does Plaintiff have any objection

08:58:32 3 to the use of that carpenter's level by any member of the

08:58:35 4 jury during their deliberations?

08:58:37 5 MS. DERIEUX: Plaintiff has no objection, Your

08:58:39 6 Honor.

08:58:39 7 THE COURT: Does Defendant have any objection?

08:58:48 8 MS. SMITH: Your Honor, Melissa Smith for Apple.

08:58:50 9 I understand that the juror proposes to use the level as a

08:58:53 10 demonstrative during deliberations to influence other

08:58:56 11 jurors' decision-making. This Court's longstanding rule is

08:59:00 12 that party demonstratives do not go back with the jury in

08:59:04 13 deliberations. So Apple would object to the jurors being

08:59:06 14 able to bring in their own demonstratives, as well.

08:59:09 15 THE COURT: All right. That objection is

08:59:10 16 sustained, and I will instruct Ms. Clendening to advise the

08:59:14 17 juror that the level will be retained by the Court Security

08:59:18 18 Officers, and when he leaves the courthouse today, he may

08:59:24 19 recover his level and take it home with him.

08:59:26 20 MS. SMITH: Thank you, Your Honor.

08:59:28 21 THE COURT: All right. Is either Plaintiff or

08:59:29 22 Defendant aware of anything else that needs to be raised

08:59:32 23 with the Court before I come back and begin final jury

08:59:34 24 instructions?

08:59:35 25 MS. DERIEUX: Nothing further from Plaintiff, Your

08:59:37 1 Honor.

08:59:37 2 THE COURT: Anything additional from Defendant?

08:59:39 3 MR. MCEDOWNEY: No, Your Honor.

08:59:39 4 THE COURT: All right. We stand in recess.

08:59:41 5 COURT SECURITY OFFICER: All rise.

08:59:42 6 (Recess.)

09:06:17 7 (Jury out.)

09:06:19 8 COURT SECURITY OFFICER: All rise.

09:06:26 9 THE COURT: Be seated, please.

09:17:10 10 Let's bring in the jury, please.

09:17:41 11 COURT SECURITY OFFICER: Yes, sir.

09:17:42 12 All rise.

09:17:43 13 (Jury in.)

09:17:44 14 THE COURT: Good morning, ladies and gentlemen.

09:18:12 15 Welcome back. Please have a seat.

09:18:13 16 Ladies and gentlemen of the jury, you've now heard

09:18:26 17 all the evidence in this case, and I'll now instruct you on

09:18:30 18 the law that you must apply.

09:18:31 19 Each of you are going to have your own individual

09:18:35 20 printed copies of these instructions that I'm giving you

09:18:38 21 orally now. So you do not necessarily need to make notes

09:18:44 22 because you're going to have your own hard copy when you

09:18:46 23 retire to the jury room, unless you particularly want to

09:18:49 24 make notes.

09:18:50 25 It's your duty to follow the law as I give it to

09:18:54 1 you. On the other hand, as I've said, you, the jury, are
09:18:57 2 the sole judges of the facts in this case.

09:19:00 3 Do not consider any statement that I've made over
09:19:04 4 the course of the trial or make during the course of these
09:19:07 5 instructions as an indication to you that I have any
09:19:11 6 opinion about the facts in this case.

09:19:14 7 You're about to hear closing arguments from the
09:19:19 8 attorneys for both of the parties. Statements and
09:19:22 9 arguments of the attorneys are not evidence, and they are
09:19:25 10 not instructions on the law. They're intended only to
09:19:33 11 assist the jury in understanding the evidence and the
09:19:35 12 parties' contentions.

09:19:36 13 A verdict form has been prepared for you, and you
09:19:39 14 will take this to the jury room after I instruct you to
09:19:44 15 retire and deliberate, and you -- when you've reached a
09:19:50 16 unanimous agreement as to your verdict, you'll have your
09:19:54 17 foreperson fill in the blanks in the jury -- in the verdict
09:19:57 18 form reflecting that unanimous agreement. Then your
09:20:01 19 foreperson should sign it and date it on the last page.

09:20:03 20 Answer the questions as directed in the verdict
09:20:07 21 form from the facts as you find them to be. Do not decide
09:20:11 22 who you think should win this case and then answer the
09:20:15 23 questions to reach that result. Your answers and your
09:20:19 24 verdict, ladies and gentlemen, must be unanimous.

09:20:21 25 In determining whether any facts have been proven

09:20:26 1 in this case, you may, unless otherwise instructed,
09:20:30 2 consider the testimony of all the witnesses, regardless of
09:20:34 3 who may have called them, and you may consider all the
09:20:37 4 exhibits received and admitted into evidence and presented
09:20:40 5 to you over the course of the trial, regardless of who may
09:20:43 6 have introduced them.

09:20:44 7 You, the jurors, are the sole judges of the
09:20:49 8 credibility of all the witnesses and the weight and effect
09:20:52 9 to give to all the evidence.

09:20:54 10 In deciding the facts in this case, you may have
09:20:58 11 to decide which testimony to believe and which testimony
09:21:01 12 not to believe. You alone are to determine the questions of
09:21:06 13 credibility or truthfulness of the witnesses.

09:21:09 14 In weighing the testimony of the witnesses, you
09:21:12 15 may consider the witness's manner and demeanor on the
09:21:15 16 witness stand, any feelings or interest they may have in
09:21:18 17 the case, any prejudice or bias about the case that the
09:21:22 18 witness may have, and you may consider the consistency or
09:21:25 19 inconsistency of their testimony considered in the light of
09:21:30 20 the circumstances.

09:21:34 21 Has the witness been contradicted by other
09:21:36 22 evidence? Has he or she made statements at other times or
09:21:40 23 places contrary to what he or she said on the witness
09:21:43 24 stand?

09:21:43 25 You must give the testimony of each witness the

09:21:46 1 amount of credibility and weight that you think it
09:21:49 2 deserves.

09:21:49 3 You must also keep in mind, ladies and gentlemen,
09:21:53 4 that a simple mistake does not mean that a witness is not
09:21:56 5 telling the truth. You must consider whether any
09:21:59 6 misstatement was an intentional falsehood or a simple lapse
09:22:04 7 of memory and what significance should be attached to that
09:22:07 8 testimony.

09:22:07 9 As I've told you previously, the attorneys in this
09:22:13 10 case are advocates for their competing clients, and they
09:22:18 11 have a duty to object when they believe evidence is offered
09:22:21 12 that should not be admitted under the rules of the Court.

09:22:25 13 When the Court sustained an objection to a
09:22:28 14 question addressed to a witness, you must disregard the
09:22:30 15 question entirely, and you may draw no inference from its
09:22:34 16 wording or speculate about what the witness would have said
09:22:38 17 if he or she had been permitted to answer that question.

09:22:41 18 However, if the objection was overruled, then you
09:22:46 19 must treat the answer to that question just as you would
09:22:49 20 treat the answer to any other question as if the objection
09:22:53 21 had not been made.

09:22:54 22 By allowing the testimony or other evidence to be
09:22:57 23 introduced over the objection of an attorney, the Court did
09:23:00 24 not indicate any opinion as to the weight or effect of such
09:23:06 25 testimony.

09:23:07 1 Now, at times during the course of the trial, it
09:23:11 2 was necessary for the Court to talk to the lawyers outside
09:23:13 3 of your hearing, either by calling a recess for that
09:23:17 4 purpose or by talking to them while you were out of the
09:23:20 5 courtroom.

09:23:21 6 This happens because often during trials, things
09:23:24 7 arise which do not involve the jury. You should not
09:23:28 8 speculate about what was said during such discussions that
09:23:32 9 took place outside of your presence.

09:23:36 10 Now, there are two types of evidence that you may
09:23:38 11 consider in properly finding the truth as to the facts in
09:23:41 12 this case. One type is direct evidence, such as the
09:23:46 13 testimony of an eyewitness. The other is indirect or
09:23:50 14 circumstantial evidence, that is, the proof of a chain of
09:23:54 15 circumstances that indicates the existence or nonexistence
09:23:59 16 of certain other facts.

09:24:00 17 As a general rule, ladies and gentlemen, the law
09:24:03 18 makes no distinction between direct evidence and
09:24:08 19 circumstantial evidence but simply requires that you find
09:24:11 20 the facts based on the evidence presented, both direct and
09:24:15 21 circumstantial.

09:24:15 22 Now, the parties may have stipulated or agreed to
09:24:19 23 some facts in the case, and when the lawyers for both sides
09:24:22 24 stipulate to the existence of a fact, you must, unless
09:24:26 25 otherwise instructed, accept the stipulation as evidence

09:24:29 1 and regard the fact as proven.

09:24:31 2 Certain testimony over the course of the trial has
09:24:36 3 been presented to you through depositions. A deposition is
09:24:40 4 the sworn, recorded answers to questions asked of a witness
09:24:44 5 in advance of the trial.

09:24:46 6 If a witness cannot be present to testify in
09:24:49 7 person from the witness stand, the witness's testimony may
09:24:53 8 be presented under oath in the form of a deposition.

09:24:56 9 Before the trial began, attorneys for both sides
09:25:01 10 in this case questioned these deposition witnesses under
09:25:04 11 oath. A court reporter was present and recorded the
09:25:08 12 testimony, both the questions and the answers.

09:25:11 13 This deposition testimony that was presented
09:25:13 14 during this trial is entitled to the same consideration as
09:25:18 15 testimony given by a witness in person who appeared
09:25:22 16 physically at the witness stand.

09:25:24 17 Accordingly, you should determine the credibility
09:25:27 18 and importance of deposition testimony to the best of your
09:25:32 19 ability, just as if the witness had testified in court in
09:25:35 20 person.

09:25:35 21 Now, while you should consider only the evidence
09:25:41 22 in this case, you are permitted to draw such reasonable
09:25:45 23 inferences from the testimony and exhibits as you feel are
09:25:52 24 justified in the light of common experience.

09:25:53 25 Said another way, ladies and gentlemen, you may

09:25:56 1 make deductions and reach conclusions that reason and
09:25:59 2 common sense lead you to draw from the facts that have been
09:26:04 3 established by the testimony and evidence in this case.

09:26:07 4 However, you should not base your decision on any
09:26:13 5 evidence not presented by the parties during the trial,
09:26:15 6 including your own personal experiences with any of the
09:26:18 7 products that are at issue in this case.

09:26:19 8 Now, unless I instruct you otherwise, you may
09:26:24 9 properly determine that the testimony of a single witness
09:26:28 10 is sufficient to prove any fact, even if a greater number
09:26:31 11 of witnesses may have testified to the contrary if after
09:26:35 12 considering all the evidence you believe that single
09:26:38 13 witness.

09:26:38 14 Now, when knowledge of a technical subject was
09:26:44 15 helpful -- or would be helpful to the jury, a person who
09:26:46 16 has special training or experience in that technical field,
09:26:50 17 we call them an "expert witness," is permitted to state his
09:26:54 18 or her opinions on those technical matters to the jury.

09:27:00 19 However, ladies and gentlemen, you're not required
09:27:01 20 to accept those opinions. As with any other witness, it's
09:27:05 21 solely up to you to decide whether or not to accept and
09:27:09 22 rely upon that testimony.

09:27:10 23 Also, certain exhibits have been shown to you
09:27:14 24 during the course of the trial that were illustrations. We
09:27:18 25 call these "demonstrative exhibits," or often we simply

09:27:23 1 call them "demonstratives."

09:27:25 2 Demonstratives are a party's description, picture,
09:27:31 3 or model to describe something involved in the trial. If
09:27:33 4 your recollection of the evidence differs from the
09:27:36 5 demonstratives, you should rely on your recollection of the
09:27:38 6 evidence.

09:27:42 7 Demonstratives are sometimes called "jury aides,"
09:27:46 8 and demonstrative exhibits themselves are not evidence but
09:27:50 9 the witness's testimony concerning a demonstrative is
09:27:52 10 evidence. Demonstratives are not going to be available to
09:27:55 11 you to review during your deliberation in the jury room.

09:27:59 12 In any legal action, including this one, facts
09:28:04 13 must be proven by a required amount of evidence known as
09:28:07 14 the "burden of proof."

09:28:09 15 The Plaintiff in this case, Personalized Media
09:28:15 16 Communications, LLC, who I'll refer to either as the
09:28:17 17 Plaintiff or PMC, has the burden of proving patent
09:28:22 18 infringement by a preponderance of the evidence. PMC also
09:28:27 19 has the burden of proving damages for patent infringement
09:28:30 20 by a preponderance of the evidence.

09:28:31 21 A preponderance of the evidence means evidence
09:28:35 22 that persuades you that a claim is more probably true than
09:28:39 23 not true. Sometimes this is talked about as being the
09:28:44 24 greater weight and degree of credible testimony.

09:28:47 25 Now, in determining whether any fact has been

09:28:49 1 proven by a preponderance of the evidence, you may, unless
09:28:53 2 otherwise instructed, consider the stipulations of the
09:28:56 3 parties, the testimony of all the witnesses, regardless who
09:29:00 4 may have called them, and all the exhibits received and
09:29:02 5 used during the trial, regardless of who may have
09:29:07 6 introduced them into evidence.

09:29:08 7 As I did at the start of the case, I'll now give
09:29:11 8 you a summary of each side's contentions in this case.

09:29:15 9 As I've previously told you, PMC, the Plaintiff,
09:29:19 10 has asserted one patent in this litigation, United States
09:29:25 11 Patent No. 8,191,091, which you've heard called throughout
09:29:30 12 the trial as the "'091 patent."

09:29:33 13 This has also been referred as the "asserted
09:29:36 14 patent" and may sometimes have been called the
09:29:38 15 "patent-in-suit." The asserted patent, the patent-in-suit
09:29:44 16 both mean the '091 patent.

09:29:45 17 PMC alleges that the Defendant, Apple Inc., who
09:29:49 18 you've heard referred to as simply Apple or as the
09:29:52 19 Defendant, has infringed Claims 13, 14, 15, and 16 of the
09:30:03 20 '091 patent. These claims may be referred to together as
09:30:05 21 the "asserted claims."

09:30:06 22 PMC alleges that Apple has indirectly infringed
09:30:11 23 the asserted claims by actively inducing others to infringe
09:30:15 24 these claims by contributing -- and by contributing to the
09:30:20 25 infringement of these claims by others.

09:30:22 1 The particular technology that is alleged to
09:30:26 2 infringe the asserted claims of the '091 patent when used
09:30:31 3 to download and decrypt content from Apple's iTunes and App
09:30:35 4 Store is called FairPlay.

09:30:38 5 You've heard this called the "accused method," you
09:30:41 6 may have heard it called the "accused technology," or
09:30:44 7 simply called "FairPlay." All three of those terms mean
09:30:48 8 the same thing.

09:30:49 9 Apple denies that it has infringed any asserted
09:30:53 10 claim of the patent-in-suit, the '091 patent, either
09:30:57 11 directly or by inducing or contributing to the infringement
09:31:01 12 of the asserted claims by others.

09:31:02 13 Your job is to decide whether Apple has infringed
09:31:07 14 the asserted claims of the patent-in-suit. If you decide
09:31:11 15 that any claim of the patent-in-suit has been infringed,
09:31:15 16 you'll then need to decide any money damages to be awarded
09:31:18 17 to PMC to compensate it for the infringement.

09:31:22 18 PMC seeks damages in the form of a reasonable
09:31:26 19 royalty.

09:31:28 20 I'll now give you instructions and definitions to
09:31:31 21 help you in answering the questions that will be presented
09:31:34 22 to you.

09:31:34 23 Before you can decide many of the issues in this
09:31:37 24 case, you'll need to understand the role of the patent
09:31:40 25 "claims." The patent claims are the numbered sentences at

09:31:44 1 the end of the patent. The claims are important, ladies
09:31:48 2 and gentlemen, because it's the words of the claims that
09:31:51 3 define what a patent covers.

09:31:55 4 The figures and the text in the rest of the patent
09:31:58 5 provide a description and/or examples of the invention, and
09:32:01 6 they provide a context for the claims, but it is the claims
09:32:07 7 that define the breadth of the patent's coverage. Each
09:32:11 8 claim is effectively treated as if it were a separate
09:32:14 9 patent, and each claim may cover more or cover less than
09:32:17 10 any other claim.

09:32:18 11 Therefore, what a patent covers depends in turn on
09:32:22 12 what each of its claims covers.

09:32:24 13 You will first need to understand what each claim
09:32:28 14 covers in order to decide whether or not there is
09:32:32 15 infringement of the claim.

09:32:33 16 Now, the law says it's my role to define the terms
09:32:37 17 of the claims, and it's your role to apply my definitions
09:32:40 18 to the issues that are -- you are asked to decide in this
09:32:43 19 case.

09:32:44 20 Accordingly, as I explained at the start of the
09:32:48 21 case, I have determined the meanings of the claims and
09:32:52 22 provided you with definitions for certain claim terms.
09:32:56 23 These definitions are found in your juror notebooks.

09:32:59 24 You must accept my definitions of these words in
09:33:03 25 the claims as being correct. It's your job to take these

09:33:07 1 definitions and apply them to the issues that you're
09:33:12 2 deciding, including the issue of infringement.

09:33:13 3 For claim terms that I have not construed or
09:33:16 4 defined for you, you are to use the ordinary meaning of the
09:33:21 5 term as it would have been understood by one of ordinary
09:33:26 6 skill in the art at the time of the invention.

09:33:28 7 Now, several times in these instructions, I'll
09:33:31 8 refer to a "person of ordinary skill in the art" or a
09:33:35 9 "person of ordinary skill in the field of the invention."
09:33:38 10 Someone with "ordinary skill in the art" is a
09:33:44 11 hypothetical person who is presumed to know all of the
09:33:47 12 pertinent prior art, just not what the inventor or another
09:33:49 13 particular individual may actually have known in the field
09:33:52 14 of the invention at the time the application for the patent
09:33:56 15 was filed.

09:33:56 16 In this case, the field of invention is content
09:34:01 17 delivery and signal processing. For purposes of these
09:34:04 18 instructions, you should use September the 11th, 1987, as
09:34:09 19 the relevant date for the '091 patent.

09:34:12 20 I'll now explain how a claim defines what it
09:34:16 21 covers.

09:34:17 22 A claim sets forth in words a set of requirements.
09:34:23 23 Each claim sets forth its requirements in a single
09:34:27 24 sentence.

09:34:27 25 In this case, the Plaintiff, PMC, has asserted

09:34:31 1 method claims which means the claim is broken out into a
09:34:35 2 series of steps. If a method performs each of these steps,
09:34:40 3 then it is covered by the claim.

09:34:41 4 Now, there can be several claims in a patent.

09:34:45 5 Each claim may be narrower or broader than another claim by
09:34:48 6 setting forth more or fewer requirements.

09:34:52 7 The coverage of a patent is assessed on a
09:34:55 8 claim-by-claim basis. In patent law, the requirement of --
09:34:59 9 the requirements of a claim are often called the "claim
09:35:02 10 elements." They're sometimes called the "claim
09:35:04 11 limitations."

09:35:04 12 When a method meets all of the requirements of a
09:35:08 13 claim, the claim is said to "cover" that method, and that
09:35:11 14 method is said to "fall" within the scope of that claim.

09:35:16 15 In other words, a claim that covers a method where
09:35:19 16 each of the claim elements or limitations is present in
09:35:23 17 that method -- excuse me, a claim covers a method where
09:35:27 18 each of the claim limitations or elements is present in
09:35:30 19 that method.

09:35:32 20 However, ladies and gentlemen, if a method is
09:35:34 21 missing even one limitation or one element of a claim, the
09:35:39 22 method is not covered by the claim.

09:35:40 23 Now, by understanding the meaning of the words in
09:35:44 24 a claim and by understanding that the words in a claim set
09:35:47 25 forth the requirements that a method must meet in order to

09:35:51 1 be covered by that claim, you will be able to understand
09:35:54 2 the -- you will be able to understand the scope of coverage
09:35:58 3 for each claim.

09:36:00 4 Once you understand what each claim covers, you
09:36:03 5 then are prepared to decide the issues that you've been
09:36:06 6 asked to decide, such as infringement.

09:36:08 7 As I mentioned at the start of the case, the
09:36:13 8 claims of the '091 patent use the word "comprising."
09:36:18 9 Comprising means including or containing. When the word
09:36:23 10 "comprising" is used in a product that includes any of the
09:36:25 11 limitations or elements of the claim, as well as additional
09:36:29 12 elements, it's covered by that claim.

09:36:31 13 For example, if you take a claim that covers the
09:36:35 14 invention of a table, if the claim recites a table
09:36:38 15 comprising a tabletop, four legs, and nails that hold the
09:36:44 16 legs and the tabletop together, the claim will cover any
09:36:47 17 table that contains these structures, even if that table
09:36:51 18 also contains other structures, such as leafs to expand the
09:36:57 19 size of the tabletop or wheels to go on the ends of the
09:37:01 20 legs.

09:37:01 21 Now, that's a simple example using the word
09:37:04 22 "comprising" and what it means. In other words, it can
09:37:07 23 have other features in addition to those that are covered
09:37:09 24 by the claim -- by the patent.

09:37:13 25 Now, this case involves two types of patent

09:37:15 1 claims, independent claims and dependent claims.

09:37:20 2 An "independent claim" sets forth all the

09:37:22 3 requirements that must be met in order to be covered by

09:37:25 4 that claim. Thus, it's not necessary to look at any other

09:37:30 5 claim to determine what an independent claim covers. It is

09:37:34 6 independent.

09:37:34 7 In this case, Claim 13 of the '091 patent is an

09:37:40 8 independent claim.

09:37:42 9 The remainder of the asserted claims in the '091

09:37:46 10 patent in this case are "dependent claims." A dependent

09:37:50 11 claim does not itself recite all the requirements of the

09:37:55 12 claim but refers to another claim for some of its elements.

09:37:59 13 In this way the claim "depends" on another claim, or as we

09:38:04 14 sometimes say, it refers to another claim.

09:38:06 15 A dependent claim incorporates all the

09:38:10 16 requirements of the claim to which it refers or from which

09:38:12 17 it depends. The dependent claim then adds its own

09:38:18 18 additional requirements.

09:38:19 19 To determine what a dependent claim covers, it's

09:38:22 20 necessary to look at both the dependent claim itself and

09:38:28 21 any other claim or claims to which it refers or depends.

09:38:31 22 A method that meets all the requirements of both

09:38:33 23 the dependent claim and the claim or claims to which it

09:38:37 24 refers is covered by that dependent claim.

09:38:39 25 You first need to understand what each claim

09:38:42 1 covers in order to decide whether or not there is
09:38:45 2 infringement of that claim.

09:38:47 3 The first step is to understand the meaning of the
09:38:50 4 words used in the patent claim.

09:38:53 5 As I've told you, the law says it's my duty to
09:38:57 6 define the meaning of the words used in the claim, but it's
09:39:00 7 your role to apply my definitions to the issues that you've
09:39:05 8 been asked to decide, including the issue of infringement.

09:39:07 9 Accordingly, as I explained at the beginning of
09:39:10 10 the case, I've already determined the meanings of certain
09:39:14 11 words used in the claims, and those have been provided to
09:39:16 12 you, those definitions, sometimes called constructions,
09:39:22 13 have been applied -- supplied to you as a part of your
09:39:25 14 juror notebooks.

09:39:26 15 You must accept my definitions of those words in
09:39:28 16 the claims as being correct, and it's your job to take
09:39:31 17 these definitions that I have supplied and apply them to
09:39:34 18 the issue of infringement.

09:39:35 19 You should refer to the constructions or the
09:39:38 20 definitions that I've provided in your juror notebooks, and
09:39:42 21 you may refer to them as needed during your deliberations.

09:39:44 22 Now, you should disregard any evidence presented
09:39:49 23 in the trial which conflicts or is inconsistent with the
09:39:53 24 definitions or constructions that I have given you.

09:39:58 25 For any of the words in the claims that I did not

09:40:04 1 construe or define, you are to use the plain and ordinary
09:40:08 2 meaning of that term as understood by a person of ordinary
09:40:10 3 skill in the art at the time of the invention.

09:40:12 4 My interpretation of the claim terms should not be
09:40:15 5 taken by you as an indication that I have any view
09:40:18 6 regarding the issue of infringement or damages. Those
09:40:22 7 decisions regarding those issues are yours alone to make.

09:40:26 8 I'll now instruct you on how to decide whether or
09:40:30 9 not Apple has infringed the asserted claims of the '091
09:40:34 10 patent.

09:40:34 11 Infringement, ladies and gentlemen, is assessed on
09:40:37 12 a claim-by-claim basis. Therefore, there may be
09:40:42 13 infringement of one claim but not infringement as to
09:40:46 14 another claim.

09:40:46 15 In reaching your decision on infringement, keep in
09:40:49 16 mind that only the claims of a patent can be infringed.
09:40:53 17 Neither the written description nor the drawings of the
09:40:57 18 patent can be infringed. The claims are intended to define
09:41:01 19 in words the boundaries of the inventor's rights.

09:41:05 20 You must compare the asserted claims as I have
09:41:08 21 construed each of them to the accused technology and
09:41:12 22 determine from that whether or not there is infringement.
09:41:15 23 The only appropriate comparison is to compare Apple's
09:41:20 24 FairPlay with the language of the claims themselves as I've
09:41:25 25 explained their meaning to you.

09:41:27 1 In order to decide the issues in the case, there
09:41:30 2 are two types of infringement that you need to understand,
09:41:32 3 direct infringement and indirect infringement. To
09:41:37 4 understand indirect infringement, you first need to
09:41:39 5 understand direct infringement. And I'll explain each type
09:41:43 6 of infringement in more detail.

09:41:45 7 I'll first instruct you on direct infringement.
09:41:50 8 You must determine separately for each asserted claim
09:41:54 9 whether there is direct infringement. A patent can be
09:41:57 10 directly infringed even if the alleged infringer did not
09:41:59 11 have knowledge of the patent and without the infringer
09:42:02 12 knowing that what it is doing is infringement of any claim.

09:42:06 13 The fact that a person accused of infringement has
09:42:11 14 its own patents does not mean that it cannot infringe
09:42:14 15 someone else's patents. A patent may also be directly
09:42:19 16 infringed even though accused -- the accused infringer
09:42:21 17 believes in good faith that what it is doing is not
09:42:24 18 infringement of the patent.

09:42:30 19 In this case, PMC alleges that customers using
09:42:33 20 Apple's devices directly infringe the asserted claims of
09:42:37 21 the '091 patent. In order to prove direct infringement,
09:42:40 22 PMC must prove by a preponderance of the evidence, that is,
09:42:43 23 that it's more likely than not, that users of Apple's
09:42:47 24 devices that implement FairPlay used a method that meets
09:42:51 25 all the requirements of a claim and did so without the

09:42:55 1 permission of PMC during the time the '091 patent was in
09:43:01 2 force.

09:43:02 3 You must compare the accused method with each and
09:43:05 4 every one of the requirements of a claim to determine
09:43:08 5 whether each and every step recited in the claim is met.

09:43:12 6 A patent claim is directly infringed only if each
09:43:16 7 and every step in that patent claim is performed. If the
09:43:21 8 accused method, as used, omits any requirement recited in a
09:43:25 9 claim, then you must find that that particular method does
09:43:28 10 not directly infringe that particular claim.

09:43:31 11 Accordingly, there may be direct infringement as
09:43:34 12 to one claim but no direct infringement as to another
09:43:37 13 claim.

09:43:38 14 You must determine separately, ladies and
09:43:41 15 gentlemen, for each asserted claim whether or not there is
09:43:44 16 direct infringement. However, if you find that an
09:43:48 17 independent claim, that is, a claim on which other claims
09:43:53 18 depend, is not directly infringed, there cannot be direct
09:43:57 19 infringement of any dependent claim that refers directly or
09:44:02 20 indirectly to that independent claim.

09:44:04 21 On the other hand, if you find that an independent
09:44:07 22 claim has been directly infringed, you must still decide
09:44:11 23 separately whether the process meets the additional
09:44:14 24 requirements of any of the claims that depend from or refer
09:44:17 25 to the independent claim, and, thus, whether those

09:44:22 1 dependent claims have also been directly infringed.

09:44:24 2 A dependent claim includes all the requirements of

09:44:31 3 any of the claims to which it refers plus the additional

09:44:34 4 requirements of it own.

09:44:36 5 Mere sale of a product capable of performing the

09:44:41 6 infringing method does not constitute infringing use of the

09:44:45 7 method.

09:44:46 8 I'll now instruct you on indirect infringement.

09:44:49 9 In this case, PMC accuses Apple of indirect

09:44:54 10 infringement. There are two types of indirect

09:44:58 11 infringement, active inducement and contributory

09:45:01 12 infringement.

09:45:01 13 PMC accuses Apple in this case of both actively

09:45:06 14 inducing infringement of the '091 patent and of

09:45:10 15 contributory infringement of the '091 patent.

09:45:12 16 I'll explain each in more detail.

09:45:16 17 In order to find indirect infringement, there must

09:45:20 18 be a direct infringer.

09:45:22 19 In this case, PMC alleges that users of Apple's

09:45:27 20 devices directly infringe the '091 patent. PMC alleges

09:45:31 21 that Apple is liable for indirect infringement by actively

09:45:35 22 inducing users of the accused technology to directly

09:45:39 23 infringe the asserted claims of the '091 patent.

09:45:43 24 As with direct infringement, you must determine

09:45:45 25 whether there has been active inducement on a

09:45:48 1 claim-by-claim basis.

09:45:50 2 Apple is liable for induced infringement of a
09:45:56 3 claim only if PMC proves by a preponderance of the evidence
09:45:58 4 that:

09:45:59 5 1. Acts have been carried out by users of Apple
09:46:05 6 devices that directly infringe that claim;

09:46:07 7 2. Apple has taken action intending to cause the
09:46:11 8 infringing acts of its users; and -- excuse me -- and

09:46:18 9 3. Apple has been aware of the asserted patent
09:46:21 10 and has known that the acts of its users constitute
09:46:25 11 infringement of the asserted patent or was willfully blind
09:46:28 12 to that infringement.

09:46:29 13 Willful blindness is established if Apple believed
09:46:35 14 there was a high probability that the acts, if taken, would
09:46:38 15 constitute infringement of the '091 patent but deliberately
09:46:44 16 avoided confirming that belief.

09:46:45 17 To establish induced infringement, it's not
09:46:49 18 sufficient that someone else directly infringes a claim,
09:46:53 19 nor is it sufficient that the company accused of inducing
09:46:56 20 another's direct infringement merely had knowledge or
09:47:00 21 notice of an asserted patent or had been aware of the acts
09:47:04 22 by another that allegedly constitute direct infringement.

09:47:07 23 And the mere fact that the company accused of
09:47:11 24 inducing another's direct infringement had known or should
09:47:14 25 have known that there was a substantial risk that someone

09:47:18 1 else's acts would infringe is not sufficient. Rather, in
09:47:25 2 order to find inducement, you must find that Apple
09:47:28 3 specifically intended or was willfully blind to that
09:47:31 4 infringement.

09:47:31 5 PMC also alleges that Apple is liable for
09:47:36 6 contributory infringement by contributing to the direct
09:47:39 7 infringement of the asserted claims of the '091 patent by
09:47:43 8 users of the accused technologies.

09:47:46 9 As with direct infringement, you must determine
09:47:50 10 contributory infringement on a claim-by-claim basis.

09:47:53 11 Apple is liable for contributory infringement of a
09:47:59 12 claim if PMC proves by a preponderance of the evidence
09:48:04 13 that:

09:48:04 14 1. Apple sells, offers to sell, imports within
09:48:09 15 the United States a component of a product or apparatus for
09:48:12 16 use in a method during the time the '091 patent was in
09:48:16 17 force;

09:48:16 18 2. The component or apparatus has no substantial
09:48:21 19 non-infringing use;

09:48:22 20 3. The component or apparatus constitutes a
09:48:27 21 material part of the invention;

09:48:29 22 4. Apple was aware of the '091 patent and knew
09:48:33 23 that the component or apparatus is especially made or
09:48:37 24 adapted for use as an infringement of the claim; and

09:48:43 25 5. Users of Apple devices use the component or

09:48:48 1 apparatus to directly infringe the claim.

09:48:49 2 If you find that Apple infringed any claim of the
09:48:53 3 patent-in-suit, you must then consider what amount of
09:48:56 4 damages to award to PMC.

09:49:01 5 I'll now instruct you about the measure of
09:49:05 6 damages, but by instructing you on damages, ladies and
09:49:07 7 gentlemen, I'm not suggesting which party should win this
09:49:11 8 case on any issue.

09:49:11 9 If you find that Apple has not infringed any claim
09:49:13 10 of the patent-in-suit, then PMC is not entitled to any
09:49:19 11 damages. The damages you award, if any, must be adequate
09:49:22 12 to compensate PMC for the infringement, and they are not
09:49:27 13 meant to punish an infringer.

09:49:29 14 PMC has the burden to establish the amount of its
09:49:33 15 damages by a preponderance of the evidence. In other
09:49:37 16 words, you should award only those damages that PMC
09:49:40 17 establishes that it more likely than not suffered.

09:49:44 18 Now, while PMC is not required to prove the amount
09:49:48 19 of its damages with mathematical precision, it must prove
09:49:53 20 them with reasonable certainty, and you may not award
09:49:56 21 damages that are speculative, damages that are only
09:50:00 22 possible, or damages that are based on guesswork.

09:50:05 23 There are different types of damages that a
09:50:07 24 patentee may seek to recover. In this case, PMC seeks to
09:50:13 25 recover what is called a reasonable royalty for its measure

09:50:15 1 of damages.

09:50:15 2 A reasonable royalty is defined as the amount of
09:50:18 3 money PMC and Apple would have agreed upon as a fee for the
09:50:23 4 use of the invention at the time prior to when the
09:50:26 5 infringement began.

09:50:27 6 You must be careful to ensure that the award is no
09:50:32 7 more or no less than the value of the patented invention.

09:50:35 8 If you find that PMC has established infringement,
09:50:40 9 PMC is entitled to at least a reasonable royalty to
09:50:43 10 compensate it for that infringement.

09:50:47 11 A royalty, ladies and gentlemen, is a payment made
09:50:50 12 to a patentholder in exchange for the right to make, use,
09:50:53 13 or sell the claimed invention. A reasonable royalty is the
09:50:58 14 amount of a royalty payment that a patentholder and alleged
09:51:03 15 infringer would have agreed to in a hypothetical
09:51:07 16 negotiation taking place at a time prior to when
09:51:11 17 infringement first began.

09:51:12 18 Evidence of things that happened after
09:51:15 19 infringement first began can be considered in evaluating
09:51:19 20 the reasonable royalty only to the extent that the evidence
09:51:23 21 aids in assessing what royalty would have resulted from the
09:51:27 22 hypothetical negotiation.

09:51:28 23 The law requires that any damages awarded to PMC
09:51:33 24 correspond to the value of the alleged inventions when the
09:51:37 25 accused -- within the accused technology as distinct from

09:51:42 1 other unpatented features of the accused technology. This
09:51:47 2 is particularly true where the accused technology has
09:51:51 3 multiple features and multiple components not covered by
09:51:56 4 the patent or where the accused technology works in
09:52:00 5 conjunction with other non-patented items.

09:52:03 6 If unpatented features contribute to an accused
09:52:06 7 product, you must apportion that value to exclude any value
09:52:12 8 attributable to unpatented features. You must determine an
09:52:17 9 appropriate royalty rate and an appropriate royalty base
09:52:20 10 that reflect the value attributable to the patented
09:52:24 11 invention alone.

09:52:25 12 In determining the reasonable royalty, you should
09:52:29 13 consider all the facts known and available to the parties
09:52:32 14 at the time infringement began. Some of the kinds of
09:52:37 15 factors that you may consider in making your determination
09:52:40 16 are as follows:

09:52:41 17 1. The royalties received by the patentee for
09:52:45 18 licensing of the patent-in-suit proving or tending to prove
09:52:49 19 an established royalty;

09:52:50 20 2. Royalties paid by the licensee for the use of
09:52:55 21 other patents comparable to the patents -- or the
09:52:58 22 patent-in-suit;

09:52:59 23 3. The nature and scope of the license as
09:53:04 24 exclusive or non-exclusive or as restricted or
09:53:07 25 non-restricted in terms of territory or with respect to the

09:53:12 1 whom the method may be used;

09:53:14 2 4. The patentee's established policy and

09:53:18 3 marketing program to maintain its patent exclusivity by not

09:53:22 4 licensing others to use the invention or by granting

09:53:25 5 licenses under special conditions designed to preserve that

09:53:30 6 exclusivity;

09:53:30 7 5. The commercial relationship between the

09:53:34 8 patentee and licensee, such as whether they are competitors

09:53:38 9 in the same territory in the same line of business or

09:53:42 10 whether they are inventor and promoter;

09:53:44 11 6. The effect of selling the patented specialty

09:53:49 12 in promoting sales of other products of the licensee, the

09:53:54 13 existing value of the invention of the patentee as a

09:54:00 14 generator of sales of his non-patented items, and the

09:54:03 15 extence -- the extent of such derivative or convoyed sales;

09:54:08 16 7. The duration of the patent and the term of the

09:54:11 17 license;

09:54:11 18 8. The profitability of the product made under

09:54:15 19 the patent, its commercial success, and its current

09:54:19 20 popularity;

09:54:23 21 9. The utility and advantages of the patented

09:54:25 22 property over the old modes or methods, if any, that have

09:54:29 23 been used for working out similar results;

09:54:31 24 10. The nature of the patented invention, the

09:54:35 25 character of the commercial embodiment of it as owned and

09:54:39 1 produced by the patentee, and the benefits to those who
09:54:42 2 have used the invention;

09:54:44 3 11. The extent to which the infringer has made
09:54:48 4 use of the invention and any evidence probative of the
09:54:50 5 value of that use;

09:54:51 6 12. The portion of the profit or of the selling
09:54:57 7 price that may be customary in the particular business or
09:55:00 8 in comparable businesses to allow for the use of the
09:55:03 9 invention or analogous inventions;

09:55:05 10 13. The portion of the realizable profits that
09:55:10 11 should be credited to the invention as distinguished from
09:55:14 12 non-patented elements, the manufacturing process, business
09:55:18 13 risks, or significant features or improvements added by the
09:55:23 14 infringer;

09:55:23 15 14. The opinions and testimony of qualified
09:55:27 16 experts;

09:55:28 17 15. The amount that the patentee and the licensee
09:55:32 18 would have agreed upon at the time the infringement began
09:55:36 19 if both had been reasonably and voluntarily trying to reach
09:55:41 20 an agreement, that is, the amount which a prudent licensee
09:55:45 21 who desired as a business proposition to obtain a license
09:55:48 22 would have been willing to pay as a royalty and yet be able
09:55:52 23 to make a reasonable profit and which amount would have
09:55:57 24 been acceptable by a prudent patentee who was willing to
09:56:01 25 grant a license.

09:56:02 1 Now, no one of these factors, ladies and
09:56:04 2 gentlemen, is dispositive, and you can and should consider
09:56:08 3 the evidence that's been presented to you in this case on
09:56:11 4 each of these factors.

09:56:12 5 You may also consider any other factors which in
09:56:15 6 your minds would have increased or decreased the royalty
09:56:20 7 the alleged infringer would have been willing to pay and
09:56:23 8 the patent owner would have been willing to accept acting
09:56:25 9 as normally prudent business people.

09:56:28 10 In considering this hypothetical negotiation, you
09:56:33 11 should focus on what the expectations of the patentholder
09:56:36 12 and the alleged infringer would have been had they entered
09:56:40 13 into an agreement at that time and had they been acting
09:56:44 14 reasonably in their negotiations.

09:56:45 15 In determining this, you must assume both parties
09:56:49 16 believed the patent was valid and infringed and that both
09:56:53 17 parties were willing to enter into an agreement.

09:56:56 18 The reasonable royalty you determine must be a
09:56:59 19 royalty that would have resulted from the hypothetical
09:57:03 20 negotiation and not simply a royalty that either party
09:57:06 21 would have preferred.

09:57:08 22 When determining a reasonable royalty, you may
09:57:12 23 consider evidence concerning the amount that other parties
09:57:16 24 have paid for the rights to the patent in question or for
09:57:20 25 rights to similar technologies.

09:57:23 1 A license agreement need not be perfectly
09:57:26 2 comparable to a hypothetical license that would be
09:57:29 3 negotiated between PMC and Apple in order for you to
09:57:32 4 consider it.

09:57:34 5 However, if you choose to rely upon evidence from
09:57:37 6 any other license agreements, you must account for any
09:57:41 7 differences between those licenses and the hypothetically
09:57:45 8 negotiated license between PMC and Apple in terms of the
09:57:49 9 technologies and economic circumstances of the contracting
09:57:54 10 parties, the number of patents involved in the license, and
09:57:58 11 the fields of use that the license permits when you make
09:58:02 12 your reasonable royalty determination.

09:58:03 13 If you have found infringement, you must determine
09:58:08 14 the date that infringement began.

09:58:11 15 As to PMC's accusation that Apple has indirectly
09:58:16 16 infringed the '091 patent, the date such infringement
09:58:20 17 begins is the date that Apple came to possess the specific
09:58:26 18 knowledge and intent required for either active inducement
09:58:29 19 or contributory infringement as I've earlier explained in
09:58:33 20 these instructions.

09:58:34 21 The filing of the complaint against Apple is
09:58:39 22 sufficient to give Apple actual knowledge so the damages
09:58:41 23 period begins no later than the date the complaint was
09:58:44 24 filed in this case. However, the damages period can begin
09:58:48 25 earlier than the filing of the complaint if you find that

09:58:52 1 Apple had the actual knowledge and intent required for
09:58:55 2 active inducement and contributory infringement at a time
09:58:59 3 prior to the filing of the complaint.

09:59:03 4 Additionally, the evidence in this case presents a
09:59:05 5 damages calculation, an amount ending on June the 30th,
09:59:11 6 2020. If you award damages you must determine the
09:59:16 7 beginning date for the damages period as I've just
09:59:18 8 explained, but such damages period will end on June the
09:59:22 9 30th, 2020.

09:59:23 10 Now, with those instructions, ladies and
09:59:26 11 gentlemen, we'll proceed to hear closing arguments from the
09:59:28 12 attorneys in this case.

09:59:29 13 The Plaintiff may now present its first closing
09:59:31 14 argument to the jury.

09:59:33 15 Mr. Kline, would you like a warning on your time?

09:59:49 16 MR. KLINE: Yes, I would, Your Honor. Thank you.

09:59:51 17 As I mentioned, I'd like to reserve 10 minutes, and I would
09:59:54 18 like a five-minute warning during this first closing.

09:59:57 19 THE COURT: So I will warn you when you've used
10:00:00 20 30 -- 25 minutes?

10:00:01 21 MR. KLINE: Yes, Your Honor. Thank you.

10:00:03 22 THE COURT: And you'll attempt to end at 30 and
10:00:08 23 reserve 10.

10:00:09 24 MR. KLINE: Yes, I will attempt to end at 30, yes.

10:00:18 25 THE COURT: I will warn you when you've used 25

10:00:19 1 minutes. You may proceed with your first closing argument.

10:00:20 2 MR. KLINE: Thank you, Your Honor.

10:00:21 3 Good morning, ladies and gentlemen, and thank you.

10:00:25 4 Monday feels like a long time ago. I try to be
10:00:28 5 grateful every day. On days like today, it's easy. The
10:00:37 6 opportunity to come here to talk with you, it really is --
10:00:42 7 some of the best days of my career have been days that I've
10:00:45 8 gotten to address a jury directly. So thank you for that.

10:00:50 9 I'm grateful for the court system. Without a
10:00:54 10 system like ours, my client, PMC, would have had nowhere to
10:00:57 11 turn. Certainly grateful for the hospitality that the city
10:01:04 12 of Marshall has shown us. I'm a visitor, as I mentioned at
10:01:08 13 the outset, and people have only been kind.

10:01:11 14 I'm grateful for my colleagues who have helped us
10:01:15 15 make the case run as efficiently as we could for you and
10:01:18 16 hopefully helped you understand it a little bit. I'm
10:01:19 17 grateful for my client who made a great contribution, and I
10:01:24 18 look forward to discussing that more with you now.

10:01:27 19 And, of course, tonight I'm sure I'll be grateful
10:01:31 20 for a proper night sleep. The first time in a little
10:01:34 21 while. And to you personally I'm grateful you gave up time
10:01:38 22 away from home, time away from your jobs. I don't imagine
10:01:42 23 any of you was thrilled to get jury duty. I've sat on a
10:01:46 24 jury.

10:01:46 25 But hopefully over the course of the week, you

10:01:49 1 came to enjoy the opportunity a little, learn a lot about
10:01:54 2 downloads and SINF files. I know that you haven't spoken
10:02:00 3 about any of this with your friends and family over the
10:02:02 4 course of the week, but maybe you found it interesting
10:02:05 5 enough that you'll begin to talk a little bit about it with
10:02:08 6 folks at home.

10:02:09 7 So we do want to say how much PMC appreciates the
10:02:14 8 sacrifice that we know you have made.

10:02:16 9 It's now your opportunity to consider the
10:02:21 10 evidence, weigh the credibility of the witnesses, follow
10:02:25 11 His Honor's instructions that you've received, and make
10:02:28 12 your decision, and this is all very important to our
10:02:35 13 democracy.

10:02:42 14 As we started earlier today, the -- it's the
10:02:44 15 constitution of the United States that conferred on
10:02:47 16 Congress the right to grant patents, to grant to inventors
10:02:53 17 the exclusive rights to their inventions. So it's very
10:02:59 18 important for us to have this jury system, as His Honor
10:03:02 19 described at the outset.

10:03:03 20 It's also very important for us to have a patent
10:03:07 21 system. The United States is the greatest engine of
10:03:11 22 innovation on earth. That is fostered by our patent
10:03:21 23 system. His Honor described at the outset that we get our
10:03:25 24 jury system from the Old Testament, from Greek to Rome to
10:03:31 25 England and here. We get a lot of our patent system from

10:03:35 1 England as well, but we made improvements on it.

10:03:38 2 In old England, the king gave patents to friends

10:03:43 3 and family. I want a buggy patent. If you were the king's

10:03:47 4 brother-in-law maybe you could get a buggy patent. But

10:03:51 5 nobody had an incentive to make a faster buggy because they

10:03:55 6 couldn't get the exclusive rights to it. The king might

10:03:58 7 give that patent to somebody else.

10:03:59 8 In the United States, we don't give patents to

10:04:03 9 friends of people in the government, to family of the

10:04:06 10 people in the government. The United States Patent and

10:04:08 11 Trademark Office grants patents to inventors, people who

10:04:11 12 make contributions to the public body of knowledge.

10:04:14 13 Those people disclose their inventions publicly so

10:04:18 14 that we can all learn for -- from them. And in exchange

10:04:22 15 for that disclosure, when the Patent Office decides that

10:04:24 16 that invention is new, it advances the state of the art,

10:04:30 17 it's different from everything that came before it, the

10:04:33 18 United States says, thank you, and we will give you the

10:04:36 19 exclusive rights to that invention for a period of time.

10:04:40 20 And that is what PMC earned in the form of the

10:04:46 21 '091 patent.

10:04:46 22 Now, I told you at the outset, as well, that the

10:04:52 23 case is about doing the right thing. It's about holding

10:04:54 24 people accountable. We all learned from our earliest days

10:05:01 25 that you cannot take something that does not belong to you.

10:05:03 1 You have to pay for permission to use other
10:05:11 2 people's property. The '091 patent is PMC's property.
10:05:16 3 They earned it by making an invention and disclosing that
10:05:19 4 invention to the United States Patent and Trademark Office.
10:05:26 5 Apple came and took that property. They used the
10:05:29 6 patented invention without paying for it. PMC spent six
10:05:35 7 years trying to convince Apple to pay for it. Apple
10:05:38 8 refused. PMC had no choice. Here we are. So we're asking
10:05:44 9 you to hold Apple accountable for that.
10:05:49 10 The very first day of trial, we heard from
10:05:53 11 Mr. Gerald Holtzman. And I wish Gerald Holtzman were
10:05:56 12 here -- Mr. Holtzman were here to tell you the story
10:06:00 13 himself. He could have walked you through the six years of
10:06:02 14 discussions that he had with Apple. But he noted in some
10:06:07 15 of his testimony by videotape: I thought naively that a
10:06:11 16 company such as Apple might be interested in our
10:06:14 17 technology.
10:06:14 18 And after six years, we heard from Ms. Metzger,
10:06:19 19 and she said: After six years of back and forth, the only
10:06:22 20 way we could protect our rights was to come to court.
10:06:26 21 So the first question you'll be asked on your
10:06:30 22 verdict form is about infringement. As His Honor
10:06:35 23 instructed, it's PMC's burden to prove infringement by a
10:06:37 24 preponderance of the evidence. We have -- I had a slide
10:06:43 25 for this, I didn't use it because we have a statue right in

10:06:46 1 front of us. We don't need my slide. And we have the
10:06:50 2 Scales of Justice here.

10:06:51 3 And as His Honor described at the outset, if you
10:06:54 4 decide that they tip ever so slightly in PMC's favor, you
10:06:58 5 should return a verdict in favor of PMC.

10:06:59 6 As His Honor just described, a preponderance of
10:07:02 7 the evidence standard means that you find it more probably
10:07:07 8 true than not that Apple has infringed PMC's patent.

10:07:09 9 We certainly believe the evidence establishes
10:07:11 10 that, and ask for your verdict in our favor in that regard.

10:07:15 11 Now, to decide the issue of infringement, we heard
10:07:19 12 a lot of people talk about this. I think we all used some
10:07:22 13 form of the real estate example. The only appropriate
10:07:27 14 comparison to determine infringement is to compare Apple's
10:07:32 15 FairPlay with the language of the claims themselves.

10:07:36 16 We don't compare the specification to FairPlay.

10:07:39 17 We don't compare the figures to FairPlay. We compare the
10:07:43 18 language of Claim 13 to FairPlay. We don't add limitations
10:07:49 19 that aren't there. We just look at the limitations that
10:07:54 20 are there.

10:07:54 21 We met Dr. Weaver maybe Day 2 of trial. And
10:08:04 22 Dr. Weaver walked us through the method for decrypting
10:08:07 23 programming at a receiver station described by Claim 13 of
10:08:10 24 the '091 patent. It includes seven steps. And Dr. Weaver
10:08:16 25 explained how FairPlay meets each of the seven steps of

10:08:20 1 PMC's Claim 13.

10:08:22 2 Now, we also have in the case Claims 14, 15, and
10:08:26 3 16. And Dr. Weaver walked us through those claims, as
10:08:30 4 well. Apple never addressed the limitations of Claims 14,
10:08:34 5 15, and 16. Apple's expert, Dr. Wicker, never addressed --
10:08:43 6 addressed the limitations described in Claim 14, 15, or 16.

10:08:48 7 So if we take a look at Claim 13 of the '091
10:08:54 8 patent, as I mentioned, it's a method for decrypting
10:08:57 9 programming at a receiver station. And this is important.
10:09:03 10 It's a method for decrypting programming at a receiver
10:09:06 11 station.

10:09:06 12 During my cross-examination of Dr. Wicker, I tried
10:09:09 13 to use the example of any one of us in this courtroom
10:09:13 14 perhaps, holding our cell phone and making a purchase or
10:09:17 15 holding our cell phone here in Marshall, Texas.

10:09:19 16 Now, Apple wants to distract you from that. Apple
10:09:26 17 talks about its security server in Nevada, North Carolina.
10:09:33 18 Its content server's in Mississippi. Dr. Wicker talked
10:09:38 19 about a content server in Tennessee.

10:09:44 20 None of that matters. It doesn't matter at all.
10:09:46 21 The claim says it's a method of decrypting programming at a
10:09:49 22 receiver station. That's the phone in your pocket. That's
10:09:54 23 the computer on your desk at home. That's the laptop on
10:10:00 24 your sofa. That's the receiver station.

10:10:09 25 The first step of the claim is receiving an

10:10:13 1 encrypted digital information transmission including
10:10:19 2 encrypted information.

10:10:20 3 Dr. Weaver explained that the encrypted digital
10:10:23 4 information transmission is the response that you receive
10:10:25 5 from iTunes when you make a purchase request. We used
10:10:30 6 throughout the trial the example of Toy Story.

10:10:34 7 Dr. Weaver explained this is the transmission that
10:10:37 8 delivers something called a SINF to the phone. The SINF is
10:10:43 9 the encrypted information in the encrypted digital
10:10:54 10 information transmission.

10:10:54 11 Now, Dr. Wicker, Apple's expert, admitted on
10:10:56 12 cross-examination that the SINF is all digital. And this
10:11:03 13 is the Court's claim construction: The encrypted digital
10:11:07 14 information transmission must be all-digital information
10:11:08 15 that's been encrypted and moved between at least two
10:11:12 16 devices.

10:11:13 17 Dr. Wicker admitted the SINF is all digital. It
10:11:17 18 moves between two devices and includes encrypted
10:11:22 19 information.

10:11:22 20 Now, Dr. Wicker adds an additional limitation to
10:11:25 21 argue that FairPlay doesn't infringe. He says, well, the
10:11:31 22 information has to be 100 percent encrypted. But the claim
10:11:36 23 doesn't say that. The claim construction doesn't say that.

10:11:40 24 The claim is to encrypted digital information
10:11:44 25 including encrypted information. If the entire thing

10:11:48 1 needed to be encrypted, you wouldn't need to say,
10:11:52 2 "including encrypted information." It wouldn't make sense
10:11:55 3 to add including information.

10:12:00 4 And Dr. Wicker certainly admitted that the SINF
10:12:03 5 includes encrypted information.

10:12:05 6 I cross-examined Dr. Weaver (sic) about when video
10:12:11 7 was encrypted, and I said, well, only part of a movie is
10:12:14 8 encrypted, for example, but we still refer to that as
10:12:17 9 encrypted information. And Dr. Wicker admitted: Yes,
10:12:22 10 that's right. It's encrypted in that a large portion is
10:12:25 11 encrypted. Just like the SINF. It's encrypted because the
10:12:30 12 private portion of it is encrypted.

10:12:35 13 Now, the next limitation of the claim is detecting
10:12:38 14 in said digital information transmission the presence of
10:12:42 15 instruct-to-enable signal, and this got quite a bit of
10:12:45 16 focus.

10:12:50 17 What we learned is the SINF includes two parts.
10:12:52 18 One part includes a key ID and a user ID, and one part
10:12:58 19 includes an encrypted content key. We have a claim
10:13:03 20 construction, and we have the instruction from the Court
10:13:04 21 just now that it's the claim constructions that govern.

10:13:08 22 The Court construed instruct-to-enable signal as a
10:13:11 23 signal that enables the implementation of the enumerated
10:13:19 24 operation.

10:13:20 25 Dr. Wicker agreed that the user ID and key ID are

10:13:24 1 part of the SINF. They are in the SINF. Now, Dr. Wicker
10:13:34 2 also agreed that without that information the system would
10:13:37 3 not be able to retrieve the appropriate key. Before the
10:13:45 4 account key and the key ID are obtained, the system would
10:13:47 5 not be able to retrieve the appropriate key.

10:13:50 6 The claim construction is a signal that enables
10:13:54 7 the implementation of an enumerated operation.

10:13:59 8 But Dr. Wicker used a different claim
10:14:02 9 construction. He used the wrong claim construction.

10:14:10 10 Dr. Wicker admitted on cross-examination that he
10:14:13 11 didn't apply the correct construction in his analysis.

10:14:15 12 Look at his slide, this is a slide in the lower
10:14:19 13 right from Dr. Wicker's presentation. He said: The key ID
10:14:23 14 and the user ID do not enumerate any operation.

10:14:26 15 Of course, that's not the claim construction.

10:14:29 16 The Court -- as -- during his examination, I asked him:
10:14:32 17 The Court has instructed us that instruct-to-enable signal
10:14:35 18 is a signal that enables the implementation of the
10:14:39 19 enumerated operation?

10:14:41 20 That's correct.

10:14:43 21 The construction is not a signal that enumerates
10:14:46 22 an operation, right?

10:14:48 23 And he admitted: That's right.

10:14:51 24 But that's the construction that Dr. Wicker used.
10:14:54 25 The claim goes on to say passing the

10:14:59 1 instruct-to-enable signal to a processor.

10:15:01 2 We have the SINF file, it passes the key ID to the
10:15:05 3 user ID -- the key ID and the user ID to the processor in
10:15:08 4 the phone. Dr. Wicker agreed with this. It's not
10:15:12 5 genuinely disputed in any way.

10:15:14 6 Next, the claim requires determining a fashion in
10:15:20 7 which the receiver station locates a first decryption key
10:15:22 8 by processing the instruct-to-enable signal.

10:15:23 9 The Court has helped us out by giving us a
10:15:31 10 construction: Determining the way that the first receiver
10:15:37 11 station locates a first decryption key.

10:15:40 12 And Dr. Weaver explained that the way FairPlay
10:15:46 13 locates the first decryption key is by finding it in the
10:15:49 14 keybag. That's the way Apple chose to design it. They had
10:15:53 15 many selections, that's the way they chose.

10:15:55 16 And, in fact, Dr. Wicker admitted during his
10:15:58 17 direct examination -- as it turns out, that the Apple
10:16:01 18 device takes the data, that's the user ID and the key ID,
10:16:04 19 the program uses it in a certain way so that the content
10:16:10 20 key is decrypted.

10:16:11 21 He talked about DPinfo and says that's done in a
10:16:15 22 different way. Each are ways, and they meet the Court's
10:16:19 23 claim construction.

10:16:19 24 Then we have to locate the first decryption key
10:16:22 25 based on the step of determining. And as we talked about,

10:16:27 1 the way FairPlay works, the key ID and the user ID are used
10:16:30 2 to locate the account key in the keybag.

10:16:35 3 Dr. Wicker, agree -- Dr. Wicker, Apple's expert,
10:16:39 4 agreed: The account key ID and the key ID are used to
10:16:45 5 identify the particular key in the keybag -- the account ID
10:16:51 6 and the key ID are used to identify the particular key in
10:16:55 7 the keybag needed, the account key, correct?

10:16:57 8 Yes.

10:16:58 9 Now -- we heard nothing from Apple for Dr. Wicker
10:17:02 10 on the last two limitations, decrypting said encrypted
10:17:06 11 information using the first key.

10:17:08 12 Dr. Weaver explained how this meets the Court's
10:17:14 13 limitations, the claim's limitations, and we heard nothing
10:17:16 14 from Dr. Wicker, Apple, disputing that FairPlay outputs the
10:17:22 15 programming, FairPlay based on the step of your -- of the
10:17:27 16 step of decrypting.

10:17:28 17 Now, PMC has accused Apple of indirect
10:17:33 18 infringement. We've heard instructions about that this
10:17:35 19 morning.

10:17:35 20 Let me ask you this, did you even know that
10:17:39 21 FairPlay was running on your phone? If you happened to
10:17:42 22 have an iPhone or you've accessed the iTunes Store from
10:17:47 23 your Samsung phone maybe or from your computer at home, did
10:17:50 24 you even know you had FairPlay on that? Well, you do. You
10:17:54 25 have FairPlay on that because Apple put FairPlay on your

10:17:57 1 phone or your computer.

10:17:59 2 And when you click "buy," Apple uses FairPlay in
10:18:02 3 conjunction with iTunes, which it also put on your phone or
10:18:06 4 your computer, to download content. It runs FairPlay
10:18:12 5 practicing the method of Claim 13 of the '091 patent.

10:18:14 6 I could take out my phone right now, I could make
10:18:19 7 a purchase, I could go right on talking with you for the
10:18:22 8 next few minutes, paying no attention to my phone, and when
10:18:25 9 I came back to it, the content would be there. It would be
10:18:27 10 there because of software that Apple put on my phone that
10:18:31 11 makes it all happen automatically.

10:18:33 12 Is Apple denying that it encourages its customers
10:18:41 13 to download apps and music that encourages app developers
10:18:45 14 to design apps? I don't think that they are.

10:18:50 15 On the question whether FairPlay does anything
10:18:52 16 other than this decryption, Dr. Weaver explained that the
10:18:59 17 decryption feature has no purpose other than to the
10:19:02 18 infringing purpose described in the '091 patent.

10:19:03 19 And Mr. Pantos even conceded during his testimony
10:19:09 20 that FairPlay is used -- is not used for any of the other
10:19:13 21 functions other than downloading. It has no substantial
10:19:16 22 use other than carrying out the elements of Claim 13 of the
10:19:21 23 '091 patent.

10:19:21 24 With regard to knowledge of the patent, this was
10:19:23 25 the timeline I showed you at the beginning of this trial.

10:19:31 1 Got a little more information on it now. This interaction
10:19:33 2 between PMC and Apple, it lasted six years. Apple had six
10:19:38 3 lawyers on this over a six-year period.

10:19:43 4 These names in the lower right-hand corner, those
10:19:46 5 are the names that show up on the correspondence among
10:19:49 6 Mr. Holtzman and Ms. Whitt, Ms. Mewes, Mr. Cooperman,
10:19:54 7 Mr. Scott, Mr. Tekslar and Mr. Murphy, all Apple lawyers on
10:19:57 8 this project for six years asking PMC for more information,
10:20:02 9 analyzing PMC's patents.

10:20:04 10 Mr. Holtzman complained -- complied every time
10:20:08 11 Apple asked for more information.

10:20:10 12 Six lawyers for six years. That's what Apple had
10:20:16 13 looking at this. And now they say we didn't know about
10:20:21 14 PMC's '091 patent.

10:20:25 15 Well, PMC was keeping Apple informed all along the
10:20:30 16 way of its patent portfolio.

10:20:32 17 Two years before the '091 patent, PMC pointed out
10:20:34 18 a patent to Apple that specifically concerned instruct to
10:20:40 19 decrypt signals, instructing decryptors to decrypt portions
10:20:44 20 of transmissions.

10:20:44 21 There's other correspondence where PMC was telling
10:20:48 22 Apple, we're pursuing patent protection for our decryption
10:20:52 23 technology. You should keep an eye on our patent
10:20:55 24 portfolio.

10:20:55 25 Do you think none of the six lawyers who were on

10:20:58 1 this project for six years never looked at what was going
10:21:01 2 on at the Patent Office? And if they didn't, it was
10:21:05 3 because they stuck their head in the sand. They decided to
10:21:09 4 be willfully blind to PMC's patent.

10:21:12 5 Ms. Mewes described: Apple does not conduct
10:21:16 6 clearance searches.

10:21:16 7 Ms. Whitt described: They don't make any effort
10:21:20 8 to investigate still-pending applications.

10:21:23 9 I can't come home from work every night, see
10:21:27 10 shingles falling off the roof of my house, ignore it, go
10:21:33 11 inside and hope the roof doesn't leak. There comes a point
10:21:38 12 I have to fix the roof.

10:21:40 13 Apple, I present to you, was watching PMC's patent
10:21:44 14 portfolio all along the way. If it wasn't, it's because it
10:21:48 15 chose to stick its head in the sand.

10:21:50 16 So don't let Apple mislead you about the things
10:21:53 17 that have been going on over the past six or even more
10:21:57 18 years.

10:21:57 19 Apple talked a lot about separation. Its system
10:22:02 20 is separated. We did a search of the transcript. It comes
10:22:04 21 up hundreds of times from the opening through
10:22:07 22 Ms. -- Dr. Wicker's testimony. Apple's system is
10:22:10 23 separated. It's got nothing to do with the claims in this
10:22:13 24 case.

10:22:14 25 Apple likes to point to one sentence in the

10:22:17 1 specification that talks about one example of the described
10:22:25 2 system that might include embedded -- signals embedded in
10:22:29 3 programming. Well let me show you where that is relative
10:22:33 4 to the claims. That's in column 7 of the spec that Apple
10:22:33 5 likes to point to.

10:22:35 6 The claims are all the way at the back of the
10:22:37 7 spec, and the Court has told us we only look at the claims
10:22:39 8 to assess infringement. Apple's trying to distract you
10:22:42 9 from that. They're saying, look over here in the spec.
10:22:47 10 Ignore what's going over here in the claim, which the Court
10:22:50 11 has told us, no. Focus on what's going over here in the
10:22:54 12 claim. That's what matters.

10:22:59 13 Apple talked about Apple patents. We just had an
10:23:03 14 instruction -- two instructions matter here. What does
10:23:05 15 comprising mean? Comprising means if you add elements to
10:23:09 16 an infringing product, you still infringe.

10:23:14 17 The Court has given us the table example. If I
10:23:18 18 have a patent on a table, you come up with a table with
10:23:21 19 leaves, that does not mean you don't infringe my table
10:23:24 20 patent.

10:23:24 21 I used to give a talk to my children when they
10:23:27 22 were in grade school. I would go there and explain to the
10:23:30 23 fifth graders how patents work, and I always had a pencil
10:23:35 24 and a pencil with an eraser. If I have a patent on a
10:23:38 25 pencil, you can't make pencils without permission from me.

10:23:43 1 If you have a pencil with an eraser on it, it's
10:23:47 2 still a pencil. You can't make those pencils without
10:23:53 3 permission from me. I have a patent on pencils. You know
10:23:53 4 what, even if adding an eraser to a pencil was itself a new
10:23:53 5 invention, I think we all agree it probably would be.

10:23:59 6 It doesn't mean that it doesn't infringe the
10:24:01 7 pencil patent. We have an instruction from the Court: The
10:24:05 8 fact that a person accused of infringement has its own
10:24:09 9 patents does not mean it cannot infringe somebody else's
10:24:12 10 patents.

10:24:13 11 And then Apple turns to simple belittling PMC and
10:24:22 12 the '091 patent. They say the technology is old. Apple's
10:24:24 13 attorney during opening argument called PMC a taker.
10:24:33 14 Throughout the trial, Apple has said PMC's patent has no
10:24:37 15 value.

10:24:37 16 Well, with respect to old, Dr. Wicker admitted
10:24:39 17 that just because technology is old doesn't mean it's not
10:24:42 18 valuable. He went on and on about 1977 encryption
10:24:47 19 technology that Amazon still uses today. He acknowledged
10:24:50 20 that, yes, some technology has real staying power.

10:24:54 21 And PMC's technology has real staying power.
10:25:00 22 Ms. Metzger told us about how her husband back in
10:25:05 23 the '80s had a vision of how technology was going to
10:25:08 24 develop. And that's why he filed a 500-page patent
10:25:12 25 application describing all the things he thought were going

10:25:14 1 to come to pass. And I would say to you, those things have
10:25:18 2 come to pass. Mr. Harvey was right. He was acknowledged
10:25:22 3 as a 30-year overnight success.

10:25:25 4 THE COURT: 25 minutes have been used.

10:25:27 5 MR. KLINE: Thank you, Your Honor.

10:25:27 6 Many other companies have acknowledged the value
10:25:32 7 of Mr. Harvey's invention and PMC's patent.

10:25:37 8 Samsung took a license in 2017. LG took a license
10:25:41 9 in 2019. You can see them all listed here.

10:25:44 10 And when you turn to damages, keep in mind,
10:25:54 11 Mr. Pantos, here with us today, he testified during the
10:25:56 12 portion that we put in on his videotape, iTunes makes Apple
10:26:02 13 devices attractive to consumers.

10:26:04 14 FairPlay is essential to iTunes.

10:26:06 15 It's essential because Apple doesn't own the
10:26:09 16 content, the content providers insisted on protection,
10:26:13 17 Apple turned to FairPlay.

10:26:14 18 Mr. Pellegrino talked about the damages. This is
10:26:18 19 another example where there was a lot of misdirection by
10:26:22 20 Apple during Mr. Pellegrino's cross-examination.

10:26:26 21 Let me try to go through this quickly.

10:26:32 22 Apple makes 31 cents on every download.

10:26:38 23 Mr. Pellegrino estimates Apple's -- calculates that Apple's
10:26:43 24 FairPlay profit is about 1.75 cents per download. That's
10:26:48 25 the share of the overall download profit.

10:26:52 1 A lot of talk that PMC wants all of it. It's
10:26:56 2 absolutely not true. As Mr. Pellegrino decide --
10:27:00 3 testified, he assigned only a quarter of the 1.75 cents to
10:27:07 4 PMC which worked out to be a little less than half a penny.
10:27:11 5 During cross-examination of Mr. Pellegrino, Apple
10:27:14 6 tried to diminish the estimate, how he came up with his
10:27:19 7 estimate of the FairPlay profit, the ballpark number he
10:27:23 8 relied on for 15 to 20 engineers working on FairPlay. Two
10:27:26 9 things. That was not his ballpark estimate. That was
10:27:32 10 Mr. Farrugia, the engineering head of Apple -- of FairPlay,
10:27:34 11 he estimated his engineering team was about 15 to 20
10:27:37 12 people.
10:27:38 13 Apple has argued it was really only a couple of
10:27:41 14 people. You know what we did, we looked at the names on
10:27:45 15 the Apple patents that they introduced, and the names on
10:27:48 16 the articles about FairPlay that Apple introduced. We
10:27:52 17 counted them up. It's 17 people.
10:27:56 18 So Mr. Farrugia's estimate was pretty right. And
10:27:59 19 that's the estimate that Mr. Pellegrino relied upon.
10:28:02 20 So what's the use that Apple made of PMC's
10:28:09 21 technology? How many times did they infringe?
10:28:12 22 They infringed over 70 billion times. Here's the
10:28:16 23 number.
10:28:21 24 As Mr. Pellegrino testified, the royalty rate that
10:28:23 25 he calculated, a little less than half a penny per

10:28:28 1 download.

10:28:30 2 The royalty base 70 billion downloads.

10:28:33 3 The damages, ladies and gentlemen, \$308,488,108.

10:28:43 4 Thank you.

10:28:43 5 So if I could briefly walk you through the verdict

10:28:46 6 form that we would ask you to fill out.

10:28:49 7 You will be asked, Question 1: Has PMC proven by

10:28:55 8 a preponderance of the evidence that Apple infringed any of

10:28:57 9 the asserted claims of the '091 patent?

10:28:58 10 We'd ask you to check yes as a finding in favor of

10:29:03 11 PMC.

10:29:04 12 The second question you will be asked: What sum

10:29:06 13 of money, if any, paid now in cash has PMC proven by a

10:29:11 14 preponderance of the evidence would compensate PMC for its

10:29:15 15 damages resulting infringement?

10:29:17 16 That number, \$308,488,108.

10:29:24 17 And Question 2b: Is the amount you awarded a lump

10:29:32 18 sum representing damages for past and future use or -- of

10:29:37 19 the claimed methods or is it the amount you awarded in

10:29:40 20 Question 2a, a running royalty.

10:29:41 21 As Mr. Pellegrino testified, ladies and gentlemen,

10:29:44 22 we ask you to check that's a running royalty.

10:29:46 23 So I'll have a few more moments with you after

10:29:50 24 Apple's attorney speaks. But I will say thank you right

10:29:54 25 now. And I'm sure I will say thank you again later.

10:29:57 1 Thank you.

10:29:58 2 THE COURT: All right. Defendant may now present

10:30:02 3 its closing argument.

10:30:03 4 Mr. Sernel, would you like a warning on your time?

10:30:07 5 MR. SERNEL: Yes, five minutes, please.

10:30:08 6 THE COURT: Five minutes remaining.

10:30:10 7 You may proceed when you're ready.

10:30:12 8 MR. SERNEL: Good morning, ladies and gentlemen.

10:30:24 9 I want to start by thanking all of you for your

10:30:30 10 time and attention this week. On behalf of my entire team,

10:30:35 11 my client, Apple, Mr. Pantos, we very much appreciate all

10:30:39 12 of your close attention to the evidence that has been

10:30:41 13 presented this week. So thank you very much for that.

10:30:47 14 And now I want to walk through what I think the

10:30:49 15 evidence has shown you this week.

10:30:51 16 Let me begin where I started on Monday afternoon.

10:30:55 17 No one in this courtroom disputes that PMC's '091

10:31:03 18 patent deserves respect. No one is trying to belittle

10:31:07 19 PMC's patent. Mr. Harvey deserves credit for his patent,

10:31:12 20 and what he invented in 1987 solving the problem that he

10:31:16 21 solved in 1987.

10:31:17 22 Where the parties part ways, however, is when PMC

10:31:24 23 tried to take credit for something they did not invent,

10:31:32 24 trying to take credit for Apple's innovation that occurred

10:31:36 25 many years later solving different problems with the

10:31:39 1 Internet and Internet downloads coming up with a very
10:31:41 2 different solution.

10:31:42 3 Now, the evidence has shown you that Apple's
10:31:45 4 solution to their problems that they confronted in the
10:31:50 5 2000s actually took the opposite approach from PMC's
10:31:56 6 patent, and the evidence showed you that they did not use
10:31:59 7 PMC's patent and do not infringe PMC's patent.

10:32:06 8 And if we can get our slides, please.

10:32:08 9 So you just heard -- His Honor provided you the
10:32:13 10 jury instructions, and the focus in this case is on the
10:32:17 11 claims. The claims are important because it's the words of
10:32:22 12 the claim that define PMC's patent rights.

10:32:24 13 We've tried to focus our evidence and presentation
10:32:28 14 in this case on the specific claims and what they cover and
10:32:34 15 what they do not cover.

10:32:36 16 Now, there's been a lot of evidence in this case
10:32:40 17 that don't necessarily go to the claims. This case is not
10:32:44 18 about Mr. Harvey's honorable and good service for this
10:32:48 19 country and good work that he's done. This case is not
10:32:52 20 about PMC licenses with other companies that have nothing
10:32:56 21 to do with the '091 patent, the patent in this case.

10:33:01 22 This case is not about meetings between the
10:33:04 23 parties or conversations between the parties where the '091
10:33:08 24 patent never came up. This case is not about buzz words or
10:33:13 25 trying to describe the invention as a key management

10:33:17 1 invention or other things like that.

10:33:19 2 This is about the claims and focusing on the
10:33:22 3 claims and what the evidence has shown about the claims.

10:33:25 4 And I would submit to you that we have provided a
10:33:27 5 lot of evidence through Mr. Pantos's testimony, through
10:33:30 6 Dr. Wicker's testimony, through the video you saw from
10:33:34 7 other Apple engineers regarding why there is no use of
10:33:38 8 PMC's patent, no infringement of PMC's patent.

10:33:42 9 And the question you have is, has PMC met its
10:33:47 10 burden to put more evidence on their side of the scale to
10:33:49 11 prove to you that they have more evidence that Apple has
10:33:53 12 actually used PMC's patent?

10:33:56 13 And I would submit to you that they have not met
10:33:59 14 that burden.

10:33:59 15 Now, we know that specifically what we're looking
10:34:02 16 at here is Claim 13 of PMC's patent, and all of these
10:34:08 17 requirements, has PMC proven that all of these requirements
10:34:11 18 in this patent and PMC's Claim 13, have those been met?
10:34:17 19 Has Apple built on this land within the red fence, as
10:34:21 20 opposed to outside, outside PMC's property line?

10:34:27 21 I would submit to you that the evidence has shown
10:34:29 22 you that Apple independently developed FairPlay, staked out
10:34:34 23 its own land solving different problems with a different
10:34:40 24 solution many years later, not on PMC's property, not on
10:34:43 25 PMC's land. Apple has not used PMC's patent, does not

10:34:48 1 infringe.

10:34:48 2 So there's another important jury instruction you
10:34:51 3 heard from His Honor just a few minutes ago, and that's
10:34:55 4 regarding credibility, credibility. What has PMC told you
10:35:07 5 in terms of what they promised during their opening
10:35:10 6 statement, during their presentation? Has the evidence
10:35:12 7 backed up what PMC promised? Has it made sense?

10:35:16 8 You should use your common sense, as Judge
10:35:18 9 Gilstrap instructed you, to consider, has the presentation
10:35:26 10 by PMC made sense? And I want to go through certain
10:35:29 11 evidence you've been presented and -- ask that question.
10:35:33 12 Has PMC's presentation made sense? Is it credible?

10:35:39 13 I want to start by looking at how PMC described
10:35:43 14 the '091 patent as foundational technology during the
10:35:48 15 opening statement.

10:35:49 16 There were several statements made, these are a
10:35:52 17 couple of them. Foundational technology for decrypting
10:35:55 18 programming. Foundational key management invention. There
10:35:58 19 were several descriptions of the -- of the '091 patent as
10:36:00 20 being foundational.

10:36:03 21 I've got the four words here that they use saying,
10:36:06 22 if you do this, you have to use -- it's a foundational
10:36:10 23 patent for doing these things: Encryption, decrypting, key
10:36:14 24 management, DRM.

10:36:14 25 The question is, did the evidence back up that

10:36:17 1 promise? Did the evidence show this patent to be
10:36:24 2 foundational?

10:36:25 3 And let's look at what the evidence actually
10:36:27 4 showed. This is PMC's expert, their hand-selected expert,
10:36:31 5 Dr. Weaver.

10:36:33 6 And I asked him: Did PMC invent
10:36:37 7 encryption/decryption?

10:36:38 8 No, they didn't.

10:36:39 9 He admitted there were lots of ways one can do
10:36:43 10 encryption and decryption without infringing or using PMC's
10:36:46 11 patent. This is not foundational to doing encryption and
10:36:54 12 decryption.

10:36:54 13 Also asked Dr. Weaver about decrypting
10:36:58 14 programming: Are there other ways -- other ways you can do
10:37:01 15 decrypting programming? Just because you're doing
10:37:04 16 decrypting programming doesn't mean you're infringing Claim
10:37:07 17 13.

10:37:08 18 He agreed with that.

10:37:08 19 He agreed PMC did not invent key management.

10:37:14 20 There are lots of ways to do key management that do not use
10:37:20 21 PMC's patent. Same thing for DRM. Lots of ways to do DRM
10:37:20 22 without infringing PMC's patent.

10:37:32 23 So just because you hear these buzz words, just
10:37:34 24 because Apple does something similar in the same general
10:37:37 25 field as the '091 patent, doesn't mean there's infringement

10:37:40 1 here. We have to focus on the specific requirements of the
10:37:43 2 claim, the specific requirements of PMC's invention. Apple
10:37:48 3 has not used that.

10:37:49 4 So on this question of foundational technology,
10:37:54 5 also I would remind you of what Mr. Harvey said. Now, if
10:38:00 6 PMC's '091 patent was a foundational patent, something that
10:38:04 7 everyone knew about, everyone would have to use because it
10:38:06 8 provides the foundation for doing what's done today, you
10:38:09 9 would think that Mr. Harvey would be easily able to say,
10:38:13 10 yeah, of course, Apple is using it.

10:38:16 11 This is foundational, pioneering technology. But
10:38:23 12 when he was asked in 2016 about his opinion about had Apple
10:38:26 13 done anything wrong, he agreed he had no opinion whatsoever
10:38:30 14 that Apple had done anything wrong to justify the lawsuit.

10:38:35 15 This is four years after the patent has issued.
10:38:38 16 FairPlay is in use that entire time. This is more than a
10:38:42 17 year after the lawsuit was filed. And Mr. Harvey could not
10:38:45 18 articulate anything that he thought Apple had done wrong.

10:38:50 19 Again, is this a foundational patent? If that's
10:38:55 20 the answer to that question, I would suggest not.

10:38:57 21 Another piece of evidence to kind of think about,
10:39:01 22 is this a foundational pioneering patent? If you have a
10:39:10 23 foundational patent, it would be something that would be
10:39:13 24 known by -- in the field.

10:39:13 25 People that are working in this area, experts in

10:39:15 1 this field would know about it. If it's a significant
10:39:19 2 patent, a significant development, people would know about
10:39:21 3 it that work in this industry.

10:39:23 4 But when we asked or when I asked Dr. Weaver:
10:39:26 5 You've been in this field for 44 years, you've paid
10:39:30 6 attention to every significant development in this area of
10:39:33 7 key management.

10:39:33 8 And he agreed: Yeah, I've stayed on top of
10:39:37 9 everything.

10:39:40 10 When was the first time you heard of PMC or its
10:39:43 11 patent? And it was when they called him up to hire him to
10:39:47 12 be an expert in this case. He had never heard of PMC or
10:39:51 13 Mr. Harvey or the '091 patent before he got involved in
10:39:55 14 this litigation.

10:39:56 15 Again, is that a foundational patent that an
10:40:00 16 expert -- their own expert hadn't even heard of before
10:40:03 17 being hired to work on the case?

10:40:07 18 Same thing with Dr. Wicker. He's been in the
10:40:09 19 field for 40 years, as well, had never heard of PMC or the
10:40:15 20 '091 patent. Again, does that make sense? Foundational
10:40:18 21 patent, I don't think so. I think it's a -- it's a
10:40:21 22 specific patent to a specific method that Apple does not
10:40:25 23 use.

10:40:26 24 Let's talk a little bit about this timeline, the
10:40:31 25 timeline of the conversations between Apple and PMC that

10:40:36 1 PMC has pointed to in both opening and closing statement.

10:40:39 2 And you can see here right in the middle of this is when
10:40:42 3 the '091 patent is actually issued by the Patent Office.

10:40:46 4 Couple things I want to point out about this
10:40:49 5 timeline to kind of put it in context.

10:40:51 6 First of all, let's think about the fact that
10:40:55 7 PMC's timeline all occurs many, many years later.

10:41:01 8 Conversations don't even start until five years after
10:41:04 9 FairPlay is developed. FairPlay was developed years and
10:41:08 10 years before PMC ever talked to Apple, and then even more
10:41:12 11 years before the '091 patent ever issued.

10:41:15 12 There's not a shred of evidence in this case that
10:41:18 13 FairPlay was developed by looking at PMC's patents or
10:41:22 14 technology or anything that PMC had done. This was
10:41:26 15 independently developed by Apple in the 2003 time frame.
10:41:32 16 And all of these conversations only happened many years
10:41:34 17 later.

10:41:35 18 Another thing I want to point out about
10:41:39 19 Mr. Kline's timeline. Now, he talked about there were six
10:41:42 20 years of back and forth and then they were forced to sue
10:41:46 21 Apple. And there's -- it's suggesting that somehow there
10:41:50 22 was conversation about this '091 patent.

10:41:57 23 The evidence actually shows you, and Mr. Kline can
10:42:00 24 get up and respond to this, he will not be able to point to
10:42:03 25 any time or conversation when PMC actually raised or

10:42:06 1 mentioned the '091 patent to Apple. It was never
10:42:12 2 mentioned.

10:42:13 3 The '091 patent issued May 2012, three-plus years
10:42:21 4 went by before this lawsuit was filed. There were numerous
10:42:28 5 conversations, as reflected here on PMC's timeline. Never
10:42:31 6 once did PMC ever mention the '091 patent to Apple.

10:42:40 7 Now, I want you to ask yourselves: If the '091
10:42:43 8 patent was this important foundational patent -- if
10:42:49 9 something important happened in one of your lives, what's
10:42:52 10 the first thing you do when something important like that
10:42:56 11 happens, when there's an important event, you receive
10:42:59 12 something important, what is the first thing you do? You
10:43:04 13 go tell somebody about it.

10:43:06 14 If you're in conversations with a company about a
10:43:09 15 potential business relationship, you'll go to Apple
10:43:12 16 immediately, you'll pick up the phone and tell them, hey,
10:43:16 17 I've got this patent that's foundational that just issued.
10:43:21 18 You will make Apple aware of that immediately if something
10:43:25 19 like that happens.

10:43:25 20 But what does the evidence show us? The evidence
10:43:29 21 shows us that not only did they not raise it with Apple
10:43:33 22 immediately, they never once mentioned the '091 patent in
10:43:39 23 any of these conversations over a three-year period. Never
10:43:45 24 once.

10:43:46 25 Now, there were patents that -- PMC -- other

10:43:55 1 patents, not the '091 patent, that PMC did mention to Apple
10:43:57 2 because Apple was asking PMC saying, we don't see the value
10:44:02 3 in your technology. We don't think it relates to our
10:44:05 4 business. Show us some of your best patents and explain to
10:44:08 5 us why we should be interested. That was what was going on
10:44:16 6 in these conversations.

10:44:18 7 And so PMC did that. They actually -- and you
10:44:21 8 heard from Mr. Holtzman and Ms. Mewes about PMC sent five
10:44:26 9 patents to Apple, not the '091, five patents to Apple and
10:44:26 10 said, okay, we think these might be relevant. Take a look
10:44:32 11 at these.

10:44:33 12 Apple, as Mr. Holtzman acknowledged, actually sent
10:44:35 13 back and they had a meeting where they talked through
10:44:37 14 Apple's 30-page presentation explaining why the
10:44:41 15 technology -- those five patents didn't apply, why they --
10:44:45 16 we weren't using them and we weren't interested in them.
10:44:51 17 And that sort of ended that conversation. But, again,
10:44:53 18 nothing about the '091 patent.

10:44:54 19 And you heard from Ms. Mewes about this. I think
10:44:57 20 we communicated our position basically that we did not
10:45:01 21 think that the five patents that were identified to us were
10:45:03 22 particularly relevant to Apple. And, effectively, we
10:45:10 23 didn't think, and explained to them in great detail why
10:45:13 24 these patents weren't really applicable to Internet
10:45:16 25 downloads and Internet companies. Provided that

10:45:19 1 explanation. Never heard anything back. And, again, never
10:45:23 2 heard one word about the '091 patent.

10:45:28 3 If this was a foundational patent that they
10:45:31 4 thought we infringed, they would have raised it. And the
10:45:34 5 evidence suggests otherwise.

10:45:36 6 Now, one other thing you heard from Ms. Mewes was
10:45:38 7 about Apple explaining to PMC, we don't think your patents
10:45:42 8 are really relevant to us, and we have lots of our own
10:45:46 9 technology and patents that we've developed in the course
10:45:51 10 of developing FairPlay.

10:45:53 11 And you heard from Mr. Tribble. Mr. Tribble was
10:45:59 12 the senior engineer in charge of the FairPlay project, and
10:46:04 13 he explained to you that there were some examples of
10:46:05 14 patents that he talked about that came out of the
10:46:08 15 development of FairPlay. And he walked through the
10:46:10 16 different technologies associated with those patents.

10:46:14 17 Here's those patents right here. These are
10:46:18 18 patents that came out of the FairPlay development work,
10:46:24 19 Apple's own hard work, show the value of Apple's great
10:46:30 20 contributions to FairPlay and everything that is involved
10:46:33 21 with FairPlay.

10:46:38 22 PMC doesn't want to give Apple credit for its own
10:46:42 23 innovations, doesn't want to value those patents that you
10:46:44 24 heard about from Mr. Tribble.

10:46:47 25 Now, what does PMC try to then point to? They

10:46:51 1 talk about, well, they've got all these other companies
10:46:53 2 that have licensed PMC's patents. Now, we know that PMC
10:46:57 3 has got lots of other patents other than the '091 patent,
10:47:03 4 and they point to all these different companies.

10:47:05 5 What did the evidence show us in terms of tying
10:47:08 6 these licenses to the '091 patent? The evidence showed us
10:47:13 7 there's no connection. That you didn't hear any evidence
10:47:18 8 that any one of these companies took a license to PMC's
10:47:21 9 patents because of the '091 patent.

10:47:25 10 PMC's own expert, their damages expert, agrees
10:47:30 11 none of these licenses are comparable to the situation that
10:47:32 12 we're considering here between Apple and PMC. These
10:47:36 13 licenses are just a distraction. And, again, we don't want
10:47:39 14 to take away the fact that PMC has developed other
10:47:43 15 technology, has made some money off of licenses of that
10:47:48 16 technology.

10:47:48 17 Give them all the credit in the world for that.
10:47:50 18 It's just this has nothing to do with the '091 patent or
10:47:54 19 licenses to the '091 patent.

10:47:55 20 Also, with respect to damages, PMC is seeking a
10:48:03 21 lot of money in this case, trying to suggest all this value
10:48:06 22 based on billions of downloads. I'll simply remind you
10:48:11 23 that you heard from Mr. Thomas that when Apple has actually
10:48:15 24 licensed technology in this area, when we're talking about
10:48:19 25 Internet downloads, which by the way all of those tie to

10:48:23 1 the 70 billion downloads, as well, that what Apple has paid
10:48:27 2 for technology that's actually relevant to FairPlay,
10:48:31 3 they've paid between 1 and \$11 million for those kinds of
10:48:37 4 patents. That this hundreds of millions that PMC is
10:48:40 5 talking about has no connection to any comparable licenses
10:48:44 6 to this kind of technology.

10:48:45 7 So ultimately, when we think about does PMC have a
10:48:50 8 foundational patent, a pioneering patent or not, we have to
10:48:54 9 think about the claim, Claim 13, what does it actually
10:48:58 10 cover? And then we can think about what Mr. Harvey
10:49:01 11 actually said about it.

10:49:02 12 Claim 13 is actually a very specific set of steps,
10:49:10 13 a very specific way of doing it. Again, perfectly okay to
10:49:13 14 solve certain problems. Not something that's foundational
10:49:16 15 or something that's useful to Internet downloads.

10:49:21 16 And Mr. Harvey acknowledged, it took a long time
10:49:23 17 to get this patent to be issued by the Patent Office.
10:49:27 18 Thousands of prior art references. This is a very crowded
10:49:30 19 field of lots of people trying to innovate.

10:49:33 20 Mr. Harvey had to specifically define a particular
10:49:36 21 niche, and he described it as a niche in the midst of all
10:49:41 22 of these inventions as his property. This -- red fence
10:49:47 23 here for Claim 13 is a niche within a whole field of people
10:49:57 24 decrypting and encrypting, methods of decrypting
10:50:00 25 programming, key management. PMC has got its piece of

10:50:04 1 property in the neighborhood.

10:50:05 2 It hasn't been able to claim the whole
10:50:07 3 neighborhood, however. And Apple has developed its
10:50:12 4 property, FairPlay, outside the fence of PMC, has not used
10:50:16 5 PMC's patent, does not infringe PMC's patent.

10:50:19 6 And you can see again -- there was some confusion
10:50:21 7 from PMC's opening regarding the dates. Again, the date
10:50:29 8 that PMC's patent is associated with is 1987. It's a 1987
10:50:35 9 invention, September 1987, solved problems that were
10:50:40 10 present at that time in September 1987.

10:50:42 11 And how do we know that that's true? You may
10:50:45 12 remember Mr. Harvey when he was asked, okay, well, have you
10:50:52 13 paid attention to innovation and computers and kind of
10:50:54 14 what's happened since 1987? And he acknowledged that he
10:50:58 15 hasn't followed it, doesn't know kind of what's happened
10:51:01 16 since 1987.

10:51:01 17 Again, no criticism. That's fine. The point is
10:51:06 18 he was focused when he came up with his invention, 1987,
10:51:09 19 the problems that existed then. He hasn't followed it
10:51:12 20 since then. Hasn't followed it, hasn't grappled with the
10:51:17 21 problems that were associated with the Internet which came
10:51:19 22 around in the '90s or all the problems that Apple has had
10:51:23 23 to deal with in terms of Internet downloads, hackers,
10:51:27 24 viruses, and all that stuff that's associated with just the
10:51:30 25 Internet.

10:51:31 1 So Apple came up with something, again, 16 years
10:51:35 2 later, that did grapple with all these problems, did come
10:51:39 3 up with a solution, a way to be able to have safe and
10:51:43 4 secure downloads of content, keep Apple users of their
10:51:48 5 devices safe from malware and viruses and that sort of
10:51:52 6 thing.

10:51:52 7 And, again, this was a time when because there was
10:51:58 8 now all this highly sensitive information that was flowing
10:52:01 9 over the Internet, you know, in content, all these movie
10:52:06 10 files and music files, et cetera, but also credit card
10:52:10 11 information, bank information, very sensitive information,
10:52:14 12 it then raised the problem of people trying to steal that
10:52:17 13 information, people trying to hack in and get their hands
10:52:20 14 on things they were not authorized to have.

10:52:23 15 And so Apple had to develop this new system, as it
10:52:27 16 was described, from scratch. Mr. Pantos,
10:52:32 17 Mr. -- Dr. Tribble, and the team had to develop this new
10:52:34 18 system to create a safe and secure platform for doing this.

10:52:38 19 Before that time, this Internet file sharing,
10:52:41 20 there was lots of theft and problems going on. Apple
10:52:45 21 developed FairPlay through thousands of hours of its own
10:52:49 22 hard work, leading to patents and other recognition to come
10:52:53 23 up with FairPlay to protect the iTunes Store.

10:52:56 24 Ultimately that was used to protect the App Store.
10:53:04 25 A new solution to a new set of problems that Mr. Harvey

10:53:07 1 never thought about, never grappled with.

10:53:10 2 And you heard from Dr. Wicker an explanation of
10:53:13 3 how this works. And you remember he had the big board in
10:53:16 4 front of you and sort of walked through all the different
10:53:18 5 aspects of how the FairPlay architecture works, how the
10:53:23 6 system works.

10:53:23 7 And he explained to you the multiple levels of
10:53:31 8 separation that are involved in trying to separate all of
10:53:33 9 these different pieces, separate servers, separate server
10:53:38 10 networks, separate transmissions, separate -- sent at
10:53:41 11 separate times, trying to separate these different pieces
10:53:44 12 in multiple ways, even at the level of the SINF, separating
10:53:48 13 out the encrypted part from the non-encrypted part.

10:53:51 14 Keeping things separate to keep them safe, that
10:53:55 15 was the Apple approach in FairPlay, very intentional, very
10:53:59 16 necessary in the context of Internet downloads to do this
10:54:04 17 separation to ensure there are not problems.

10:54:06 18 When you put these things together, one thing gets
10:54:10 19 hacked, the whole thing is broken. Apple tries to separate
10:54:14 20 it out to make sure that a hacker has to get its hands on a
10:54:20 21 lot of different things, sort of hack through the system in
10:54:23 22 multiple ways in order to break the system. That's the
10:54:25 23 purpose of all this separation that's built in that Dr.
10:54:28 24 Wicker talked about.

10:54:29 25 And you can see here when Dr. Wicker was asked,

10:54:35 1 how do you compare this FairPlay architecture in sort of
10:54:38 2 general terms to the claims of the '091 patent? And he
10:54:41 3 explained it's a completely different approach, with all
10:54:48 4 these different degrees of separation, pulling things
10:54:50 5 apart, not putting them together, not sending them
10:54:55 6 together.

10:54:55 7 So let's now talk a little bit about PMC's '091
10:54:58 8 patent and what the evidence has shown you about this
10:55:00 9 patent and what PMC's approach was to the problem it solved
10:55:05 10 in 1987.

10:55:06 11 You'll remember we talked about this and
10:55:12 12 Dr. Wicker talked about it. The present invention, so PMC
10:55:15 13 describing its own invention as employing signals embedded
10:55:22 14 in programming, and then talking about the various
10:55:24 15 advantages that it saw with that solution to the problem it
10:55:27 16 confronted in 1987, putting these things together.

10:55:32 17 Signals with programming embedded in programming.
10:55:34 18 That was the solution to address the problem they -- it was
10:55:38 19 confronting, again, personalizing media for people in 1987.

10:55:42 20 Now, Mr. Kline suggests, well, embedding, I don't
10:55:48 21 see that in the claim and tries to take us to task for
10:55:52 22 saying -- pointing to something in the specification, the
10:55:54 23 description that PMC provides for the patent, and
10:55:56 24 suggesting that it's not in the claim.

10:55:57 25 But we can see here this concept is expressly in

10:56:02 1 the claims. Maybe not the word "embedding," but you can
10:56:07 2 see the claim specifically requires that you have this
10:56:10 3 encrypted digital information transmission, and then you
10:56:12 4 have to detect in that transmission, so this signal, the
10:56:17 5 presence of an instruct-to-enable signal.

10:56:24 6 The instruct-to-enable signal must be found in, or
10:56:27 7 embedded within, in the encrypted digital information
10:56:32 8 transmission that is received by the receiver station.
10:56:36 9 This is exactly what this is being talked about, embedding
10:56:39 10 signals within.

10:56:40 11 You must detect within that transmission the
10:56:44 12 presence of one of these signals. That is exactly what
10:56:47 13 this claim is saying. And the evidence has shown you that
10:56:50 14 Apple does not do that, does it exactly the opposite way.

10:56:54 15 Now, there's two claim constructions from the
10:56:59 16 Court that are relevant to this -- these requirements here,
10:57:04 17 the encrypted digital information transmission is an all --
10:57:07 18 must be all-digital information that has been encrypted and
10:57:10 19 moved between at least two devices.

10:57:14 20 I'll -- stop here and -- talk about Mr. Kline just
10:57:17 21 mentioned, well, all this happens at the receiver station.
10:57:20 22 You can ignore the transmissions. A couple of responses to
10:57:24 23 that.

10:57:24 24 First of all, the claim specifically requires that
10:57:28 25 we look at what's been received by the receiver station and

10:57:33 1 judge, okay, are we finding the right things there. Is
10:57:36 2 there an encrypted transmission? Are we finding the signal
10:57:39 3 in that transmission that's been received? Okay. So you
10:57:43 4 have to look at what's received, not just what's happening
10:57:45 5 at the receiver station.

10:57:46 6 Second -- thing I would point out is even their
10:57:49 7 own experts went through this whole process of how there's
10:57:54 8 communication, transmissions between the various servers.

10:58:00 9 This is clearly relevant to considering what these
10:58:03 10 transmissions can contain and whether there's infringement.

10:58:05 11 Their own experts went through all of that in
10:58:07 12 detail. This is not Dr. Wicker only going through it.

10:58:09 13 Their own experts went through all these transmissions, the
10:58:13 14 seven steps that occur before the pieces get to an iPhone.

10:58:16 15 The second construction that's relevant is a
10:58:19 16 signal that enables the implementation of the enumerated
10:58:24 17 operation. This is the instruct to enable signal. So for
10:58:29 18 these two -- these two limitations here, there's actually
10:58:31 19 two reasons, two things that PMC has failed to prove Apple
10:58:35 20 does. Apple does it in a different way. Two things
10:58:39 21 that -- where this falls apart.

10:58:42 22 First place, and this is Mr. Roger Pantos, you
10:58:45 23 heard from him, the Apple engineer that was instrumental in
10:58:48 24 developing FairPlay, explained that there's nothing in any
10:58:52 25 of these transmissions that's enumerating an operation,

10:58:58 1 that implements the enumeration of an opera -- operation.

10:59:01 2 Nothing at all.

10:59:03 3 Now, if you look back, that's what we need to
10:59:06 4 have. That's what we need to have in one of these
10:59:09 5 transmissions, a signal that enables the implementation of
10:59:17 6 an enumerated operation. There's nothing received by Apple
10:59:20 7 devices that does that.

10:59:21 8 Now, Mr. Pantos is probably the single most
10:59:26 9 knowledgeable person about the FairPlay software. He was
10:59:28 10 involved in writing the source code. He was involved in
10:59:31 11 writing the documents regarding the source code. You heard
10:59:33 12 from Mr. Pantos in an hour of video.

10:59:37 13 He was then asked questions on direct examination
10:59:39 14 for an hour and provided you this information, that there's
10:59:42 15 nothing in these transmissions that enumerate any kind of
10:59:46 16 operation.

10:59:46 17 If PMC thought that something Mr. Pantos had said
10:59:51 18 was wrong that didn't properly reflect what the source code
10:59:55 19 said, what the documents said, they should have asked him
10:59:59 20 questions, right? PMC did not ask Mr. Pantos a single
11:00:04 21 question on cross-examination, didn't try to -- try to
11:00:10 22 follow up and ask him anything about these statements where
11:00:13 23 he's saying, we don't do this. We don't do what the claim
11:00:17 24 requires.

11:00:18 25 Why did PMC not ask Mr. Pantos a single question

11:00:25 1 on cross-examination? It's probably because they didn't
11:00:31 2 want to know the answer. They knew the answer wasn't going
11:00:36 3 to be good for them. They knew the answer was Apple just
11:00:43 4 simply does not do what the claim requires, does not
11:00:48 5 infringe the claim.

11:00:48 6 You also heard from Dr. Wicker on this point and
11:00:52 7 explained how nothing that's being received in these
11:00:55 8 transmissions is enumerating any operations. There is no
11:01:01 9 infringement. So that's the first reason of that first
11:01:03 10 part of the claim, nothing received that enumerates
11:01:07 11 operations.

11:01:07 12 There is no instruct-to-enable signal as the Court
11:01:09 13 has construed and required it must be.

11:01:12 14 There's a second reason why the evidence has not
11:01:18 15 shown that this is done by Apple's FairPlay software.

11:01:22 16 You may remember that Dr. Weaver talked about what
11:01:24 17 he thought was going to be this instruct-to-enable signal,
11:01:29 18 and he pointed to in his testimony -- and we've got it
11:01:33 19 there on the right -- the key ID and the user ID. That's
11:01:36 20 what he said, Dr. Weaver, were the instruct-to-enable
11:01:42 21 signals in the Apple transmissions.

11:01:44 22 So you can see here the key ID and the user ID are
11:01:48 23 on the left side. And, remember, there's a public part and
11:01:53 24 a private part. So these two things that Dr. Weaver, PMC's
11:01:56 25 expert, pointed to are in the public part, the

11:02:01 1 non-encrypted part.

11:02:02 2 But Dr. Weaver admitted that. The key ID and the
11:02:07 3 user ID are in the non-encrypted part of this transmission.
11:02:11 4 But then Dr. Weaver had to admit that the claim
11:02:16 5 requires the instruct-to-enable signal must be part of the
11:02:21 6 encrypted part of this.

11:02:23 7 It's got to be, according to PMC's invention,
11:02:26 8 according to the requirements of the claim, it must be in
11:02:32 9 the encrypted part, the pink or red part here.

11:02:35 10 To practice this claim, to infringe this claim,
11:02:39 11 they would have had to have found something in the red
11:02:43 12 part. But that's not where Dr. Weaver found it. There is
11:02:47 13 no infringement here.

11:02:49 14 This is -- we -- Apple does this very specifically
11:02:53 15 in a different way, separate out these parts. Separate
11:02:58 16 private, separate encrypted from the public part. And then
11:03:02 17 it puts the pieces in the public part, not the encrypted
11:03:08 18 part. This is separate, not together, not sent -- you're
11:03:11 19 not finding this instruct-to-enable signal where the claim
11:03:15 20 requires it must be, in the encrypted part.

11:03:19 21 So this is a second reason why Apple's system does
11:03:22 22 not infringe Claim 13 and the evidence has shown it does
11:03:26 23 not infringe Claim 13.

11:03:27 24 Let's move on to other elements. And, again, if
11:03:34 25 PMC doesn't show that all of this is done, there is no

11:03:38 1 infringement. So all we need to show is one is missing.

11:03:44 2 There's multiple missing. We've already talked

11:03:45 3 about two. Let's talk about another one here. This

11:03:45 4 requirement of determining a fashion in which the receiver

11:03:50 5 station locates.

11:03:50 6 And the Court has helped us out with a

11:03:52 7 construction on this saying that that means determining the

11:03:55 8 way the receiver locates a first decryption key.

11:04:00 9 So what did the evidence show on this? You may

11:04:06 10 remember during Dr. Weaver's cross-examination that he

11:04:10 11 testified about this concept of locating.

11:04:15 12 And I asked him a question. This is on the left

11:04:19 13 on Tuesday, it was late in the day, so maybe we were

11:04:23 14 getting a little bit tired, but late in the day on Tuesday,

11:04:26 15 I asked him: In fact, your opinion is that generating a

11:04:30 16 key is something different than locating a key.

11:04:33 17 Because, again, the claim requires locating,

11:04:38 18 right?

11:04:38 19 I said: Right?

11:04:39 20 And he said: No, wrong.

11:04:42 21 He pushed back on that because he knew that the

11:04:45 22 claim requires locating, and he knew that the evidence

11:04:48 23 showed that what they did was generating a key, not

11:04:52 24 locating a key.

11:04:57 25 And I then had to confront him with the expert

11:04:59 1 report he had put together in 2016. His own words in his
11:05:04 2 own report, which -- stated: After all, it is only common
11:05:09 3 sense that locating is different from generating. You can
11:05:15 4 only locate something that's already in existence.

11:05:21 5 If you have to generate it, you can't locate it.

11:05:25 6 And that's what Dr. Weaver said was only common sense in an
11:05:30 7 expert report he wrote in this case in 2016.

11:05:33 8 THE COURT: Five minutes remaining.

11:05:34 9 MR. SERNEL: And then I followed up and asked him:
11:05:37 10 In your own opinion, generating a key is not equivalent,
11:05:41 11 not the same, as locating a key?

11:05:44 12 And Dr. Weaver, when confronted with his prior
11:05:47 13 words on the same exact subject, had to admit: Yeah,
11:05:52 14 that's what I said in 2016.

11:05:58 15 He had to admit he was caught trying to change his
11:06:00 16 opinion on this to try to make it fit the claims.

11:06:04 17 And when we walked through this with Dr. Wicker
11:06:07 18 yesterday, asked him about, okay, well, this generating
11:06:10 19 versus locating, which one is correct, Dr. Weaver in his
11:06:13 20 expert report or Dr. Weaver on Tuesday?

11:06:16 21 He explained: Yeah, he was correct in 2016.

11:06:20 22 Generating a key is different than locating a key. And if
11:06:23 23 you apply what Dr. Weaver said in his expert report in 2016
11:06:28 24 to the FairPlay system, there is no infringement. There is
11:06:32 25 no locating of a key. There's no determining a fashion to

11:06:36 1 locating a key.

11:06:38 2 And if there's any doubt about this, we can look
11:06:43 3 at the testimony from PMC's other expert. This is
11:06:45 4 Dr. Plock, and you'll remember he's the one that actually
11:06:48 5 looked at the source code. Dr. Weaver admitted he didn't
11:06:51 6 look at the source code, wasn't asked to look at the source
11:06:54 7 code.

11:06:54 8 Dr. Plock is the one PMC expert that actually
11:06:57 9 looked at the source code. And you can see here he
11:07:01 10 acknowledges that in terms of this generating or locating,
11:07:06 11 the way that PMC -- or Apple system works is DPinfo is used
11:07:11 12 to generate or compute the DP key as opposed to locating
11:07:15 13 it. Again, differentiating these two things.

11:07:18 14 Apple DPinfo generated, not located. There is no
11:07:24 15 infringement.

11:07:24 16 And so I think the evidence has shown you that
11:07:29 17 there are multiple reasons, multiple requirements of
11:07:33 18 Claim 13 that Apple's system does not use. There is no
11:07:37 19 infringement of this claim.

11:07:44 20 And you're going to look -- you're going to
11:07:46 21 receive a verdict form when you go back to deliberate in
11:07:48 22 the jury room. I would submit that the evidence has shown
11:07:51 23 you that PMC has not met its burden to prove infringement
11:07:54 24 of these specific requirements of Claim 13.

11:07:57 25 The answer on the question of infringement is

11:08:00 1 that, no, it has not been proven by PMC.

11:08:04 2 And then the question with respect to damages is

11:08:06 3 that PMC has not shown themselves to be entitled to any

11:08:09 4 damages. That should be a zero on the verdict form. That

11:08:13 5 is what the evidence has shown to you.

11:08:15 6 And I would submit that ultimately at the end of

11:08:21 7 the day, again, we don't want to take away PMC's patent or

11:08:24 8 its land or the credit it deserves for other licenses it

11:08:28 9 has with other companies for other patents, PMC is entitled

11:08:33 10 to what it's developed.

11:08:35 11 But on the same token, Apple has also developed

11:08:40 12 its own technology, deserves its own respect, and has

11:08:43 13 staked out its own land that is not on PMC's property.

11:08:47 14 Apple has not used PMC's patent. Apple has not infringed

11:08:53 15 PMC's patent.

11:08:53 16 Now, this is the last opportunity I'll get to

11:08:56 17 speak with you. The rules are that Mr. Kline gets the last

11:09:01 18 word, and so I won't be able to get back up and respond to

11:09:06 19 Mr. Kline in his last statements.

11:09:08 20 I would simply ask you to think about, as you hear

11:09:11 21 Mr. Kline's last arguments, think about the credibility of

11:09:13 22 the presentation. Think about what the evidence has

11:09:16 23 actually shown you.

11:09:18 24 Think about if he's backed up with evidence these

11:09:21 25 assertions of infringement. And I would submit to you that

11:09:25 1 when you consider the evidence, Apple has shown you that
11:09:29 2 there is no use of PMC's patent and there has been no
11:09:35 3 infringement.

11:09:35 4 Thank you very much.

11:09:37 5 THE COURT: Plaintiff may now present its final
11:09:39 6 closing argument.

11:09:40 7 You have 10 minutes and 15 seconds, counsel.

11:09:44 8 Would you like a warning on this final argument?

11:09:47 9 MR. KLINE: I would, Your Honor. Thank you. Three
11:09:56 10 minutes?

11:09:57 11 THE COURT: I'll warn you when you have three
11:09:59 12 minutes remaining.

11:10:01 13 MR. KLINE: Thank you.

11:10:03 14 THE COURT: Please proceed.

11:10:05 15 MR. KLINE: Thank you, Your Honor.

11:10:06 16 Well, on some -- think about the credibility of
11:10:09 17 the presentation. I invite you to do that. Please do.

11:10:11 18 On some level, I appreciate Apple has a story, and
11:10:18 19 they're sticking with it. So I give them credit for that.

11:10:24 20 They say they don't belittle the '091 patent and
11:10:30 21 PMC's invention. They characterize it as niche. They say
11:10:37 22 Mr. Harvey characterized it as niche, but that was actually
11:10:41 23 the Apple lawyer characterized it as niche.

11:10:45 24 It's interesting to me, they talk about all the
11:10:46 25 other ways of encrypting and decrypting. There are all

11:10:51 1 sorts of other ways to protect keys, all sorts of ways to
11:10:54 2 encrypt and decrypt.

11:10:58 3 Well, ask yourself if there were all these other
11:11:02 4 ways to do it, why did Apple do it the way the '091 patent
11:11:06 5 describes? Why didn't Apple choose one of these other
11:11:08 6 ways?

11:11:09 7 As Dr. Weaver described, Apple's FairPlay
11:11:11 8 practices the method for decrypting programming described
11:11:16 9 in PMC's '091 patent. If Apple thinks there were all these
11:11:21 10 other ways to do it, they should have done it one of those
11:11:24 11 other ways.

11:11:25 12 They criticize Mr. Harvey for not knowing how
11:11:30 13 FairPlay works, ignoring how many times we had to seal this
11:11:35 14 courtroom because the discussions of Apple's technology
11:11:36 15 were highly confidential.

11:11:41 16 Every time we sealed this courtroom, Mr. Harvey
11:11:46 17 had to leave the courtroom because he's not allowed to see
11:11:53 18 Apple's confidential information. And then Apple comes and
11:11:59 19 they criticize Mr. Harvey for not knowing how FairPlay
11:12:02 20 works.

11:12:02 21 They criticize PMC for not being well-known.
11:12:07 22 Who's ever heard of PMC? PMC never bought an advertisement
11:12:15 23 for the Super Bowl. I don't see PMC advertisements during
11:12:23 24 every intermission of every NFL game that I watch. I see
11:12:27 25 Apple advertisements.

11:12:28 1 I see Apple advertisements in the Super Bowl, on
11:12:34 2 TV every night, on billboards as a drive down Route --
11:12:42 3 Highway 20, that's when I see Apple advertisements. And
11:12:43 4 you're right, we don't see PMC advertisements. And then
11:12:46 5 they come and they criticize because people haven't heard
11:12:49 6 of PMC.

11:12:56 7 Now, if I could see -- Mr. Boles, maybe you could
11:12:59 8 help me -- the timeline slide, please.

11:13:02 9 They say that -- they claim that Apple told PMC
11:13:10 10 that we don't see the value of your portfolio. Well, we
11:13:13 11 heard from Mr. Holtzman. Mr. Holtzman testified, no one,
11:13:18 12 no one ever told me from Apple that your patents do not
11:13:24 13 intersect with our products.

11:13:26 14 Ms. Mewes, you heard testimony from Ms. Mewes.
11:13:30 15 That's testimony that PMC presented from her deposition.
11:13:35 16 Apple didn't bring her to talk about her inter- -- her
11:13:38 17 discussions with Mr. Holtzman.

11:13:41 18 You heard from Ms. Whitt. That's testimony that
11:13:45 19 PMC played because we took her deposition. You didn't hear
11:13:51 20 Ms. Whitt come and explain her interactions with
11:13:54 21 Mr. Holtzman.

11:13:55 22 Nobody came to disagree with Mr. Holtzman when he
11:13:58 23 said that, no one ever told me that your patents don't
11:14:01 24 intersect with our products.

11:14:03 25 Mr. Thomas. Mr. Thomas talked about some licenses

11:14:10 1 during his testimony, and Apple's lawyer referred to those
11:14:13 2 licenses. They didn't give you those licenses, though.

11:14:16 3 All those licenses -- you're going to get the exhibits.

11:14:19 4 You're going to -- they're going to come back to
11:14:21 5 you in the jury room, the exhibits that the parties
11:14:23 6 introduced. They didn't put those exhibits into evidence.

11:14:28 7 I don't know if it's because they don't want you to
11:14:30 8 actually see the exhibits. I don't know why they did that.

11:14:33 9 PMC put an Apple license into evidence, the

11:14:38 10 Intertrust agreement. Apple took a license to DRM
11:14:42 11 technology from a company called Intertrust. Apple paid

11:14:48 12 [REDACTED]

11:14:55 13 took from Intertrust.

11:14:57 14 That license is in evidence. The licenses that
11:15:01 15 Mr. Thomas says he relied upon, Apple didn't put those into
11:15:05 16 evidence. You will not have the opportunity to review
11:15:07 17 those yourselves in the jury room.

11:15:09 18 Now, with respect to this whole issue of separate.

11:15:16 19 We're still on separate, I see.

11:15:18 20 And if we could see -- Mr. Boles, if you could
11:15:22 21 help me and show Slide 10 of our presentation. Thank you.

11:15:26 22 The claim limitation is receiving an encrypted
11:15:33 23 digital information transmission, it includes encrypted
11:15:35 24 information.

11:15:35 25 Dr. Weaver explained -- am I going to click that,

11:15:41 1 or are you, Mr. Boles? Thank you.

11:15:44 2 Dr. Wicker explained: The Court has construed
11:15:48 3 it's an all-digital information that's been encrypted and
11:15:53 4 moved between two -- at least -- between at least two
11:15:54 5 devices.

11:15:55 6 And maybe we can go back, Mr. Boles.

11:15:58 7 Dr. Weaver explained: That is the response that
11:16:00 8 you receive from iTunes. The purchase request response
11:16:04 9 that you receive from iTunes, that is the claimed encrypted
11:16:08 10 digital information transmission.

11:16:09 11 It includes encrypted information. There's no
11:16:18 12 dispute that the SINF that Apple sends you when you make a
11:16:22 13 purchase request includes encrypted information. Apple
11:16:26 14 calls it the private part of the SINF. It includes the
11:16:33 15 encrypted content key that you need to watch Toy Story on
11:16:36 16 your phone.

11:16:37 17 Dr. Weaver agrees. Dr. Wicker agrees.

11:16:43 18 With respect to detecting in -- Apple's lawyer
11:16:48 19 referred to the "in" limitation here. To detecting in said
11:16:53 20 encrypted information transmission of the presence of an
11:16:55 21 instruct-to-enable signal, Dr. Weaver explained that's
11:16:59 22 exactly what happens with FairPlay.

11:17:01 23 It's the key ID and the user ID. Exactly as the
11:17:11 24 claim requires, it is in the encrypted digital information
11:17:16 25 transmission. This is probably the prime example of Apple

11:17:19 1 trying to confuse you.

11:17:20 2 What Apple is arguing is that the claim requires
11:17:23 3 the instruct-to-enable signal to be in the programming. It
11:17:28 4 does not.

11:17:29 5 THE COURT: Three minutes remaining.

11:17:31 6 MR. KLINE: Thank you, Your Honor.

11:17:36 7 So what I'll close with, ladies and gentlemen, is
11:17:40 8 we've heard quite a bit of misdirection from Apple point of
11:17:43 9 view. We've seen their defense. We understand why Apple
11:17:46 10 has so desperately wanted to make this case about anything
11:17:51 11 other than Claim 13, anything other than Apple's
11:17:56 12 infringement of PMC's patent, anything other than Apple's
11:18:00 13 use, improperly, of PMC's patented technology.

11:18:06 14 They brought you a defense full of distraction and
11:18:11 15 misdirection, perhaps in the hope that you might give them
11:18:17 16 a pass.

11:18:17 17 That's been Apple's approach since the beginning,
11:18:22 18 from the opening that they made, from the testimony of
11:18:24 19 their witnesses. They strung PMC along for six years, and
11:18:29 20 they spent this week hoping they could distract us all from
11:18:36 21 what's really going on here.

11:18:37 22 So as I mentioned at the outset, we are asking you
11:18:40 23 to hold Apple accountable.

11:18:42 24 They called PMC a taker. They called Mr. Harvey a
11:18:47 25 taker. I would ask you, ladies and gentlemen, who is doing

11:18:51 1 the taking here? The evidence has been abundantly clear
11:18:56 2 that it is Apple that has been doing the taking. They have
11:19:02 3 taken PMC's patented technology without permission.

11:19:05 4 Now, at the end of this trial, you will return a
11:19:08 5 verdict. And this is what's going to happen next. The
11:19:13 6 lawyer sitting at this table is going to go out on to the
11:19:16 7 street, he's going to call back to Cupertino, California,
11:19:21 8 and tell his boss the news. What did the jury decide? And
11:19:26 9 he's going to make one of two calls.

11:19:29 10 He may call, and he's going to say: Good news, we
11:19:35 11 got away with it. We fooled everybody. The jury came back
11:19:40 12 for Apple.

11:19:41 13 Or he's going to make that call and say: I got
11:19:46 14 bad news. They figured it out. I think we're going to
11:19:50 15 have to change the way we deal with innovators. I think
11:19:53 16 we're going to have to change the way we deal with people
11:19:56 17 like Mr. Harvey, companies like PMC. I think we're going
11:20:01 18 to have to start respecting other people's intellectual
11:20:04 19 property.

11:20:04 20 Ladies and gentlemen, don't let them make that
11:20:08 21 first call. Make them make that second call. Hold Apple
11:20:12 22 accountable.

11:20:14 23 Thank you very much.

11:20:14 24 THE COURT: Ladies and gentlemen, you've now heard
11:20:24 25 closing arguments from the attorneys for both of the

11:20:28 1 parties.

11:20:28 2 I'd like to provide you with a few final

11:20:30 3 instructions before you begin your deliberations.

11:20:34 4 You must perform your duties as jurors without

11:20:38 5 bias or prejudice as to any party. The law does not permit

11:20:45 6 you to be controlled by sympathy, prejudice, or public

11:20:48 7 opinion.

11:20:49 8 All parties expect that you will carefully and

11:20:52 9 impartially consider all the evidence, follow the law as I

11:20:56 10 have given it to you, and reach a just verdict regardless

11:21:01 11 of the consequences.

11:21:02 12 Answer each question in the verdict form based on

11:21:05 13 the facts as you find them to be, following the

11:21:07 14 instructions that has -- that the Court has given you on

11:21:10 15 the law to apply.

11:21:11 16 Do not decide who you think should win and then

11:21:14 17 answer the questions accordingly. Again, let me remind

11:21:19 18 you, your answers and your verdict in this case must be

11:21:23 19 unanimous.

11:21:24 20 You should consider and decide this case as a

11:21:26 21 dispute between persons of equal standing in the community,

11:21:32 22 of equal worth, and holding the same or similar stations in

11:21:36 23 life. This is true in patent cases between corporations,

11:21:40 24 partnerships, and individuals.

11:21:41 25 A patent owner is entitled to protect his rights

11:21:45 1 under the laws of the United States. And this includes
11:21:50 2 bringing a suit in a United States District Court for money
11:21:52 3 damages for infringement.

11:21:56 4 The law recognizes no distinction among the types
11:22:00 5 of parties. All corporations, partnerships, other business
11:22:04 6 organizations and individuals stand equal before the law,
11:22:09 7 regardless of their size, who owns them, and they are to be
11:22:12 8 treated as equals.

11:22:14 9 Now, when you retire to the jury room in just a
11:22:17 10 few minutes to deliberate on your verdict, you're going to
11:22:19 11 each have a copy of these instructions that I've been
11:22:21 12 giving you orally. You'll have your own individual written
11:22:26 13 copy.

11:22:26 14 If you desire during your deliberations to review
11:22:29 15 any of the exhibits which the Court has admitted into
11:22:31 16 evidence and which have been shown to you during the course
11:22:34 17 of the trial, you should advise me by way of a written
11:22:40 18 note, dated and signed by your foreperson, and delivered to
11:22:43 19 the Court Security Officer who will bring it to me.

11:22:45 20 I will then upon receipt of such note send you
11:22:51 21 that exhibit or those exhibits in the jury room. I remind
11:22:55 22 you, demonstrative exhibits are not evidence, and I cannot
11:22:59 23 send you demonstratives in the jury room.

11:23:01 24 Once you retire, you should first select your
11:23:03 25 foreperson and then conduct your deliberations. If you

11:23:07 1 recess at any time during your deliberations, follow all
11:23:11 2 the instructions the Court has given you about your conduct
11:23:15 3 throughout the trial.

11:23:17 4 After you've reached a verdict, your foreperson is
11:23:20 5 to fill in the verdict form in a manner that reflects your
11:23:24 6 unanimous answers to the questions contained therein.

11:23:27 7 Do not reveal your answers until such time as you
11:23:30 8 are discharged unless otherwise instructed by me. And you
11:23:34 9 must never disclose to anyone, not even to me, your
11:23:39 10 numerical division on any question.

11:23:41 11 Any notes you've taken over the course of the
11:23:43 12 trial are aids to your memory only. If your memory should
11:23:50 13 differ from your notes, you should rely on your memory and
11:23:52 14 not your notes.

11:23:53 15 The notes are not evidence, and a juror who has
11:23:57 16 not taken notes should rely on his or her own independent
11:24:01 17 recollection of the evidence and not be unduly influenced
11:24:03 18 by the notes of other jurors.

11:24:05 19 Notes are not entitled to any greater weight than
11:24:07 20 the recollection or impression that each juror had of the
11:24:10 21 testimony.

11:24:10 22 Now, if you want to communicate with me at any
11:24:14 23 time, you should give a written message or a question
11:24:19 24 written by your foreperson, signed and dated by your
11:24:21 25 foreperson to the Court Security Officer who will bring it

11:24:24 1 to me.

11:24:25 2 I'll then respond to you as soon as possible,
11:24:29 3 either in writing or by having you brought back into the
11:24:32 4 courtroom where I can address you orally. I will always
11:24:37 5 upon receipt of a note or question disclose it to the
11:24:41 6 attorneys in the case first before I respond to any such
11:24:43 7 question.

11:24:44 8 After you've reached a verdict and after I have
11:24:48 9 discharged you from your position as jurors in this case,
11:24:51 10 you are not required, ladies and gentlemen, to talk about
11:24:54 11 or discuss your service in this case with anyone.

11:24:58 12 However, by the same token, at that time, after
11:25:00 13 I've discharged you, you are absolutely free to talk with
11:25:05 14 anyone in any way about your service as jurors in this
11:25:07 15 case. The decision is 100 percent up to you.

11:25:12 16 Whether you decide to discuss what has happened
11:25:14 17 while you served as a juror in this case or not is
11:25:17 18 completely your only personal decision.

11:25:20 19 I'm now going to hand eight printed copies of
11:25:23 20 these jury instructions and a clean copy of the verdict
11:25:26 21 form to the Court Security Officer who will bring -- who
11:25:29 22 will bring them to you in the jury room.

11:25:31 23 Ladies and gentlemen of the jury, you may now
11:25:36 24 retire to the jury room to deliberate. We await your
11:25:39 25 verdict.

11:25:40 1 COURT SECURITY OFFICER: All rise.

11:25:41 2 (Jury out.)

11:26:09 3 THE COURT: Please be seated.

11:26:10 4 Counsel, you are welcome to wait for the jury's

11:26:12 5 verdict here in the courtroom. I'm also aware you have

11:26:15 6 facilities offsite in which you have been meeting. You're

11:26:20 7 welcome to wait there.

11:26:21 8 If you elect to wait outside the courtroom, then

11:26:24 9 keep your cell phones on and active so that we can reach

11:26:27 10 you and you can be here in a manner of a few minutes either

11:26:31 11 if I receive a note or upon the return of a verdict.

11:26:34 12 Awaiting either a note from the jury or a return

11:26:38 13 of the jury's verdict, the Court stands in recess.

11:26:40 14 COURT SECURITY OFFICER: All rise.

11:26:42 15 (Recess.)

02:49:11 16 (Jury out.)

02:49:11 17 COURT SECURITY OFFICER: All rise.

02:49:31 18 THE COURT: Be seated, please.

02:49:57 19 Counsel, I've received the following note from the

02:50:11 20 jury. It contains two questions.

02:50:18 21 First question with regard to Question 2b: "The

02:50:23 22 amount awarded in Question 2a, a lump sum representing

02:50:27 23 damages for past and future use of the claimed methods, or

02:50:30 24 is the amount you award in Question 2 a running royalty?

02:50:34 25 Then below that, this says: Check one, comma, do

02:50:43 1 we have a choice to award a lump sum or a running royalty
02:50:48 2 as a preference, or can it be both?

02:50:51 3 That appears to be the first question.

02:50:54 4 The second question: Can we have a calculator?

02:50:58 5 Then it's dated today's date and signed by

02:51:04 6 Mr. Quarles, who appears to be Juror No. 3, as the

02:51:08 7 foreperson.

02:51:08 8 I have prepared a tentative response, and I have a

02:51:19 9 copy for both Plaintiff and Defendant if you want to

02:51:25 10 approach, and I'll give you a copy of my proposed written

02:51:28 11 response.

02:51:29 12 Ms. Brunson will hand it to you.

02:51:31 13 Then I'll read it and see if there are any

02:51:33 14 questions or changes.

02:51:34 15 My response to Note No. 1 is as follows: Members

02:51:40 16 of the jury, in response to the questions in your first

02:51:43 17 jury note:

02:51:45 18 (A) You should award either a lump sum or a

02:51:48 19 running royalty. It must be one or the other and cannot be

02:51:52 20 both.

02:51:52 21 (B) A calculator as requested is being delivered

02:51:58 22 with this response.

02:51:59 23 Is there objection from either Plaintiff or

02:52:01 24 Defendant for the Court to send in that written response

02:52:04 25 with a calculator?

02:52:05 1 MR. KLINE: No objection, Your Honor.

02:52:06 2 MR. AROVAS: No objection, Your Honor.

02:52:09 3 THE COURT: All right. And I've signed the

02:52:22 4 written response.

02:52:28 5 And I have a calculator on the bench.

02:52:31 6 Mr. Fitzpatrick, if you'll give the jury this

02:52:34 7 written response along with this calculator.

02:52:36 8 COURT SECURITY OFFICER: Yes, sir.

02:52:37 9 THE COURT: Also for the record, I'm taking the

02:52:42 10 original note and marking it with a "1" in the upper

02:52:45 11 right-hand corner for identification and handing it to

02:52:48 12 the courtroom deputy to be included in the papers of this

02:52:50 13 case.

02:52:50 14 All right. Counsel, pending either another note

02:52:55 15 from the jury or the return of a verdict, we stand in

02:52:59 16 recess.

02:53:01 17 COURT SECURITY OFFICER: All rise.

02:53:02 18 (Recess.)

03:39:44 19 (Jury out.)

03:48:49 20 COURT SECURITY OFFICER: All rise.

03:48:50 21 THE COURT: Be seated, please.

03:48:51 22 Counsel, I've received the following note from the

03:49:23 23 jury dated today's date, and it's signed by Mr. Quarles as

03:49:28 24 foreperson:

03:49:29 25 "We have reached a verdict."

03:49:31 1 I'll hand the note from the jury to the courtroom
03:49:34 2 deputy to be included in the documents of this case.
03:49:37 3 Let's bring in the jury.
03:49:44 4 COURT SECURITY OFFICER: All rise.
03:50:11 5 (Jury in.)
03:50:14 6 THE COURT: Please be seated, ladies and
03:50:17 7 gentlemen.
03:50:17 8 Mr. Quarles, I understand you are the foreperson
03:50:23 9 of the jury. Has the jury reached a verdict?
03:50:28 10 THE FOREPERSON: Yes, sir.
03:50:29 11 THE COURT: Would you hand the dated and signed
03:50:31 12 verdict form to the Court Security Officer who will bring
03:50:33 13 it to me?
03:50:38 14 Ladies and gentlemen, I'm going to announce the
03:51:10 15 verdict into the record at this time, and I'd like to ask
03:51:13 16 each member of the jury to listen particularly closely and
03:51:17 17 carefully as I do that, because after I've announced the
03:51:21 18 record -- the verdict into the record, I'm going to ask
03:51:25 19 each of you if this is your verdict so that we can confirm
03:51:29 20 it is, in fact, the unanimous verdict of every member of
03:51:32 21 the jury.
03:51:32 22 Turning to the verdict form and beginning on Page
03:51:42 23 4 where Question 1 is found:
03:51:44 24 Has PNC -- PMC proven by a preponderance of the
03:51:49 25 evidence that Apple infringed any of the asserted claims of

03:51:52 1 the '091 patent?

03:51:52 2 The jury's answer is: Yes.

03:51:56 3 Turning to Page 5 where Question 2a is located:

03:52:03 4 What sum of money, if any, paid now in cash has

03:52:07 5 PMC proven by a preponderance of the evidence would

03:52:10 6 compensate PMC for its damages resulting from infringement?

03:52:14 7 The jury's answer is: \$308,488,108.

03:52:24 8 Turning to Page 6 where Question 2b is found:

03:52:32 9 Is the amount you awarded in Question 2a a lump

03:52:36 10 sum representing damages for past and future use of the

03:52:39 11 claimed methods, or is the amount you awarded in Question

03:52:45 12 2a a running royalty?

03:52:46 13 The jury's answer is: Running royalty.

03:52:49 14 Turning to Page 7, which is the final page of the

03:52:54 15 jury -- or the verdict form, I find it's dated with today's

03:52:58 16 date and signed by Mr. Jerry Quarles as the foreperson of

03:53:03 17 the jury.

03:53:04 18 Ladies and gentlemen of the jury, let me poll you

03:53:08 19 at this time and make sure that this verdict, as I have

03:53:11 20 read it, is the unanimous verdict of all eight members of

03:53:14 21 the jury.

03:53:14 22 If this is your verdict as I have read it, would

03:53:18 23 you please stand up?

03:53:20 24 (Jury polled.)

03:53:21 25 THE COURT: Thank you. Please be seated.

03:53:26 1 Let the record reflect that all eight members of
03:53:29 2 the jury immediately rose and stood in response to the
03:53:31 3 Court's question to poll the jury.

03:53:33 4 I'm going to hand the original verdict to the
03:53:37 5 courtroom deputy.

03:53:39 6 For the record, ladies and gentlemen, the Court
03:53:41 7 accepts your verdict. And I have confirmed to my
03:53:45 8 satisfaction that it is the unanimous verdict of all eight
03:53:48 9 members of the jury.

03:53:49 10 This now completes the trial of this case, ladies
03:53:53 11 and gentlemen. And from the very beginning, I have
03:53:56 12 instructed you over and over again about not discussing
03:53:59 13 this case with anyone.

03:54:02 14 We are now at a point where I am releasing you
03:54:05 15 from that instruction, I'm releasing you from all the
03:54:09 16 instructions I've given you, and I'm discharging you as the
03:54:13 17 jury in this case.

03:54:14 18 You are now free to talk about this case with
03:54:16 19 anybody you'd like. You are also free not to talk about
03:54:19 20 this case with anybody that you like.

03:54:22 21 Let me explain what the practice and custom here
03:54:27 22 in this court is and has been for more than 30 years. It
03:54:32 23 was that way when I got here and started practicing in this
03:54:34 24 area.

03:54:36 25 And that is as follows, counsel and the parties

03:54:39 1 and the support teams for each side of this case cannot
03:54:43 2 initiate a conversation with you about your service. None
03:54:47 3 of these lawyers or anyone else involved with either side
03:54:50 4 of this case is going to come up to you and try to get you
03:54:54 5 to talk about your service as jurors.

03:54:57 6 However, if you want to talk with any of them, I
03:55:01 7 promise you they are more than happy on either side of the
03:55:05 8 case to hear what you have to say.

03:55:07 9 And let me explain how that works, because I did
03:55:10 10 this when I was in practice. Before you leave the
03:55:14 11 building, some if not all of these lawyers are probably
03:55:18 12 going to position themselves on the front sidewalk at the
03:55:22 13 bottom of the steps as you leave the courthouse. And
03:55:24 14 you're going to get the opportunity to walk beside them or
03:55:27 15 to walk near them. And if you want to talk, I promise you
03:55:30 16 that's why they're there. They're going to make themselves
03:55:33 17 available to you. They're not going to stop you. They're
03:55:35 18 not going to try to engage you in conversation. It's
03:55:38 19 strictly up to you.

03:55:39 20 If you want to talk, I promise you, they'll want
03:55:41 21 to talk. If you don't want to talk, nobody is going to try
03:55:46 22 to get you to talk. It's strictly up to you. If you're
03:55:50 23 not interested in having a conversation, just smile, and as
03:55:55 24 the saying goes, walk on by.

03:55:57 25 Also, ladies and gentlemen, I've added to this

03:56:00 1 process -- I haven't changed it, but I've added something
03:56:04 2 to it, and that is in the last few years, I've asked each
03:56:08 3 side to give me a cell phone number for a representative
03:56:11 4 from each trial team. And I've got those cell phone
03:56:15 5 numbers, and I'm going to give them to you in just a
03:56:18 6 minute.

03:56:18 7 And if you want to call one of those numbers or
03:56:21 8 both of those numbers and talk to a lawyer on either side
03:56:25 9 or both sides of the case, they'll pick up the phone, I
03:56:29 10 guarantee you, and they'll want to visit with you. If you
03:56:31 11 don't want to call, you just don't call. But to make it
03:56:37 12 more conducive to you doing it later, not today, and at
03:56:42 13 your own convenience, you'll have a representative cell
03:56:45 14 phone number. And if you want to use it, use it. If you
03:56:48 15 don't, don't. Again, the decision is 100 percent strictly
03:56:53 16 up to you.

03:56:53 17 Also, ladies and gentlemen, since I've been on the
03:57:05 18 bench, I've followed the following practice. Every time a
03:57:08 19 jury has returned a verdict and I've accepted a verdict and
03:57:11 20 the trial has come to a close like today, I have prepared a
03:57:16 21 personal letter of thanks to each of you, and I've prepared
03:57:19 22 a certificate from the Court thanking you and acknowledging
03:57:22 23 your service and sacrifice as jurors in this case.

03:57:26 24 There was a period of time where I came into the
03:57:29 25 jury room after each trial and asked the jury to meet me

03:57:33 1 there, and I handed out these certificates, and I shook
03:57:37 2 their hands and thanked them for their service
03:57:41 3 face-to-face, because I think what you've done warrants
03:57:43 4 that kind of special attention and special appreciation.
03:57:46 5 During the last year, I suspended that for a while
03:57:50 6 because of reasons you well understand with the pandemic.
03:57:54 7 With the fact that I've gotten both shots and I
03:57:58 8 suspect some of you have gotten shots and I'm going to wear
03:58:01 9 a mask, I'm going to restart the old process, and I'm going
03:58:06 10 to ask as a favor to me if as you leave the jury box,
03:58:10 11 instead of immediately exiting the courthouse, you will
03:58:13 12 wait in the jury room for just a minute and let me come in,
03:58:16 13 I'd like to hand each one of you your own letter and
03:58:19 14 certificate, and I'd like to thank you in person. We may
03:58:23 15 not shake hands, but I'd like to look you in the eye and
03:58:27 16 say, thank you for your service, because what you have done
03:58:30 17 is very real and important public service.
03:58:33 18 In my opinion, it's the second highest form of
03:58:36 19 public service any American citizen can render. And in a
03:58:41 20 very real way, what you've done this week has helped
03:58:44 21 strengthen and protect and defend our Constitution. And I
03:58:48 22 think that warrants a special word of thanks and a personal
03:58:52 23 word of thanks.
03:58:53 24 So if you're willing to do that, I promise I won't
03:58:57 25 keep you long, but I'd like the privilege of thanking you

03:59:01 1 in person before you leave.

03:59:02 2 Counsel, the Court accepts the verdict of the
03:59:06 3 jury. The Court discharges the jury from their service as
03:59:10 4 jurors in this case. This completes the trial, and you are
03:59:15 5 excused.

03:59:16 6 Ladies and gentlemen, I'll meet you in the jury
03:59:18 7 room.

03:59:18 8 COURT SECURITY OFFICER: All rise.

9 (Court adjourned.)

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CERTIFICATION

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3 I HEREBY CERTIFY that the foregoing is a true and
4 correct transcript from the stenographic notes of the
5 proceedings in the above-entitled matter to the best of my
6 ability.

7

8

9 /S/ Shelly Holmes _____
10 SHELLY HOLMES, CSR, TCRR
OFFICIAL REPORTER
State of Texas No.: 7804
11 Expiration Date: 10/31/2021

3/19/2021
Date

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